# REPORT OF THE COMMITTEE AGAINST TORTURE

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-SEVENTH SESSION

SUPPLEMENT No. 44 (A/47/44)

UNITED NATIONS

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New York, 1992

## NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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# I. ORGANIZATIONAL AND OTHER MATTERS

## A. States parties to the Convention

1. As at 8 May 1992, the closing date of the eighth session of the Committee against Torture, there were 67 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. A list of States which have signed, ratified or acceded to the Convention together with an indication of those that have made declarations under articles 21 and 22 of the Convention is contained in annex I to the present report.

2. The texts of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.2.

## B. Opening and duration of the sessions

3. The Committee against Torture held two sessions since the adoption of its last annual report. The seventh and eighth sessions of the Committee were held at the United Nations Office at Geneva from 11 to 21 November 1991 and from 27 April to 8 May 1992.

4. At its seventh session, the Committee held 16 meetings (88th to 103rd meeting) and at its eighth session, the Committee held 15 meetings (104th to 118th meeting). An account of the deliberations of the Committee at its seventh and eighth sessions is contained in the relevant summary records (CAT/C/SR.88-118).

## C. Membership and attendance

5. In accordance with article 17 of the Convention, the Third Meeting of the States parties to the Convention was convened by the Secretary-General at the United Nations Office at Geneva, on 26 November 1991. The following five members of the Committee were elected for a term of four years beginning on 1 January 1992: Mr. Hassib Ben Ammar, Mr. Peter Thomas Burns, Mr. Fawzi El Ibrashi, Mr. Ricardo Gil Lavedra and Mr. Hugo Lorenzo. The list of the members, together with an indication of the duration of their term of office, appears in annex II to the present report.

6. All the members attended the seventh session of the Committee except Ms. Socorro Díaz Palacios. The eighth session of the Committee was attended by all the members except Mr. Gil Lavedra, who attended only part of that session.

## D. Solemn declaration by the newly elected members of the Committee

7. At the 104th meeting, on 27 April 1992, the five members of the Committee who had been elected at the Third Meeting of the States parties to the Convention made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

## E. Election of officers

8. At the 104th meeting, on 27 April 1992, the Committee elected the following officers for a term of two years in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

| | |
|---|---|
| Chairman: | Mr. Joseph Voyame |
| Vice-Chairmen: | Mr. Alexis Dipanda Mouelle<br>Mr. Ricardo Gil Lavedra<br>Mr. Dimitar N. Mikhailov |
| Rapporteur: | Mr. Peter Thomas Burns |

## F. Agendas

9. At its 88th meeting, on 11 November 1991, the Committee adopted the following items, listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/15), as the agenda of its seventh session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.
7. Preparatory activities relating to the World Conference on Human Rights.

10. At its 104th meeting, on 27 April 1992, the Committee adopted the following items, listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/18), as the agenda of its eighth session, as follows:

1. Opening of the session by the representative of the Secretary-General.

2. Solemn declaration by the newly elected members of the Committee.

3. Election of the officers of the Committee.

4. Adoption of the agenda.

5. Organizational and other matters.

6. Submission of reports by States parties under article 19 of the Convention.

7. Consideration of reports submitted by States parties under article 19 of the Convention.

8. Consideration of information received under article 20 of the Convention.

9. Consideration of communications under article 22 of the Convention.

10. Action by the General Assembly at its forty-sixth session:

    (a) Annual report submitted by the Committee against Torture under article 24 of the Convention;

    (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.

11. Preparatory activities relating to the World Conference on Human Rights.

12. Annual report of the Committee on its activities.

## G. Cooperation between the Committee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture

11. The Committee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture held a joint meeting on 29 April 1992, during the 107th meeting of the Committee. The Chairman of the Committee and the Chairman of the Board of Trustees, Mr. Jaap Walkate, provided information on the most recent activities of both organs.

12. The Chairman of the Board of Trustees stressed that in 1992, nearly US$ 3 million were needed to finance the rehabilitation projects for victims of torture addressed to the Fund but that only US$ 1.5 million had been made available by Governments or other sources. The Committee agreed to bring this matter to the attention of States parties to the Convention when their reports were considered by the Committee and to encourage them to make generous contributions to the Fund.

## H. Information on the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

13. At the 99th meeting, on 19 November 1992, Mr. Bent Sorensen, at the Committee's invitation, provided information on the status and activities of the European Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of which he had been a member and First Vice-Chairman since September 1989. He stated, in particular, that all 23 member States of the Council of Europe had ratified the European Convention for the Prevention of Torture; Hungary and Czechoslovakia, two new member States, were in the process of ratifying it. In accordance with the mandate entrusted to it by the European Convention, the European Committee for the Prevention of Torture could visit any place within the jurisdiction of the States parties where persons were deprived of their liberty by a public authority. By the end of 1992, delegations of the European Committee were to have visited 12 States parties to the European Convention.

14. At the 113th meeting, on 4 May 1992, Mr. Sorensen provided additional information on the European Committee for the Prevention of Torture, in particular with regard to the methods of work it had developed as a result of its experience in visiting places of detention.

## I. Question of a draft optional protocol to the Convention

15. The Committee had exchanged views on the question of a draft optional protocol to the Convention during its sixth session, in April 1991. 1/

16. At that session, the Committee had before it document E/CN.4/1991/66, containing the text of the optional protocol to the Convention which had been submitted by the Government of Costa Rica to the Commission on Human Rights at its forty-seventh session together with an introductory memorandum on the subject. The Committee also had before it Commission decision 1991/107 of 5 March 1991, by which the Commission had decided to consider the draft optional protocol at its forty-eighth session in 1992.

17. At its eighth session, the Committee, in addition to document E/CN.4/1991/66, had before it resolution 1992/43 adopted by the Commission on Human Rights on 3 March 1992, by which the Commission had decided to establish an open-ended inter-sessional working group in order to elaborate a draft optional protocol to the Convention against Torture, using as a basis for its discussions the draft text proposed by the Government of Costa Rica on 22 January 1991, and to consider the implications of its adoption as well as the relationship between the draft optional protocol, regional instruments and the Committee against Torture. The Commission had also requested the Secretary-General to invite the Committee against Torture, among others, to send comments on the draft optional protocol and its implications for consideration by the working group, and to circulate those contributions to Governments in advance of the meeting of the working group.

18. The Committee discussed this issue at its 105th, 114th and 116th meetings, on 28 April and 4 and 5 May 1992.

19. The members of the Committee reiterated their agreement in principle with the establishment of a system of preventive visits to places of detention at the global level and reaffirmed that the text of the draft optional protocol submitted by Costa Rica provided a valuable basis for discussion in the open-ended inter-sessional working group of the Commission on Human Rights. In addition, members of the Committee made a number of observations concerning the text of specific articles of the draft optional protocol.

20. With regard to article 8, paragraph 2, of the draft optional protocol, members of the Committee were of the view that the text should be changed or an additional paragraph added to outline in more detail how the relationship between the Committee against Torture and the subcommittee to be established under the optional protocol would be affected by the postponement of a scheduled mission by the latter in cases where a State party had agreed to receive a visit of the Committee against Torture under article 20 of the Convention.

21. With regard to article 9, paragraph 1, of the draft optional protocol, the members of the Committee were of the view that the term "may" appearing at the beginning of the second sentence of paragraph 1, should be replaced by the term "shall". They were also of the view that consideration should be given to adding a paragraph to article 9 which would exhort all the international and regional organs or organizations concerned to engage in the fullest cooperation with each other.

22. With regard to article 15 of the draft optional protocol, the members of the Committee were of the view that its provisions unduly restricted the information that should be made available to the Committee against Torture in respect of its jurisdiction under article 20 of the Convention. They accordingly suggested that the following proposal be taken into consideration as an alternative to article 15 of the draft optional protocol or to any other relevant provision:

> "The subcommittee shall submit to the Committee against Torture the following reports:
>
> (a) Reports which the State party concerned wishes to be published;
>
> (b) Reports upon which the subcommittee wishes the Committee against Torture to make a public statement;
>
> (c) Reports which in the subcommittee's opinion reveal that systematic torture has been practised by a State party;
>
> (d) Reports concerning a State party in respect of which the Committee against Torture has indicated to the subcommittee that an inquiry in accordance with article 20 of the Convention against Torture is under consideration;
>
> The reports under (b), (c) and (d) shall be dealt with by the Committee against Torture in private meetings."

23. In addition, the members of the Committee felt that in paragraph 2 of article 15 of the draft optional protocol, after the words "general annual report on its activities", the following words should be added: ", including a list of all States parties visited, the composition of the visiting delegations and the places visited.".

## J. Preparatory activities relating to the World Conference on Human Rights

### Seventh session

24. At the 88th meeting, on 11 November 1991, the Committee took note of the fact that Ms. Christine Chanet and Ms. Díaz Palacios, who had been designated by the Committee as its representative and alternate representative to the Preparatory Committee for the World Conference on Human Rights, were no longer in a position to continue their task since they did not intend to be candidates for re-election as members of the Committee for a new term beginning 1 January 1992. Consequently, the Committee designated Mr. Sorensen as its representative to the Preparatory Committee for the Conference and Mr. Mikhailov as its alternate representative.

25. At its 98th meeting, on 18 November 1991, Ms. Chanet reported on her participation in the first session of the Preparatory Committee which had been held in Geneva from 9 to 13 September 1991.

26. In her intervention during that session, Ms. Chanet had stated, inter alia, that the World Conference should make a specific assessment of the ways and means available to it and should approach its work in three different ways. First, States should be encouraged to accede to existing instruments without reservations. Secondly, new approaches should be explored in order to ensure broader and more specific observance of human rights and to consider the establishment of new structures to provide an immediate response in situations of flagrant and massive human rights violations. Thirdly, issues relating to information, communication, education, technical assistance and research should also be a priority in the work of the Conference.

27. At the 98th and 99th meetings, on 18 and 19 November 1991, members of the Committee exchanged views on suggestions and recommendations that could be submitted to the Preparatory Committee at its second session, to be held in Geneva from 30 March to 10 April 1992. They were of the view that a formal report on their discussion of the World Conference was not necessary at that stage.

28. The Committee agreed that its discussion as reflected in the relevant summary records should serve to guide its representative and its alternate representative to the Preparatory Committee for the World Conference on Human Rights.

### Eighth session

29. At its 113th meeting, on 4 May 1992, Mr. Sorensen reported on his participation in the second session of the Preparatory Committee.

30. In his intervention during that session, Mr. Sorensen stressed, inter alia, the link between development, democracy and the abolition of torture as well as the importance of information, education and research to prevent torture. The Committee against Torture was ready to provide assistance in promoting these issues before the World Conference.

31. Members of the Committee exchanged views on suggestions and recommendations that its representative or its alternate representative could submit to the Preparatory Committee for the World Conference on Human Rights at its third session, to be held in Geneva in September 1992.

32. Members of the Committee were of the view that the question of torture should be dealt with by the World Conference and that the fight against torture should be one of the objectives of the Conference. They were of the view also that non-governmental organizations should be duly represented at the Conference, and that two members of each of the human rights treaty bodies should be entitled to participate as observers in the Conference. In addition, each regional preparatory meeting for the Conference should encourage States to pledge contributions to the United Nations Voluntary Fund for Victims of Torture and, as recommended by the Board of Trustees of the Fund, the World Conference should set aside some time to meet as a pledging conference for United Nations voluntary funds. It was also suggested that the World Conference consider the possibility of making Human Rights Day on 10 December of each year a thematic celebration by focusing on important issues, such as the fight against torture all over the world. Such a suggestion could perhaps be discussed during the fourth meeting of the Chairpersons of human rights treaty bodies, to be held in Geneva in October 1992.

## II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION

33. The Committee considered this agenda item at its 108th, 109th and 113th meetings, held on 29 and 30 April and 4 May 1992.

### A. Annual report submitted by the Committee against Torture under article 24 of the Convention

34. The Committee had before it an informal note by the Secretariat based on the summary records of the Third Committee of the General Assembly covering the discussion of its annual report (A/C.3/46/SR.39-43). The Committee took note with interest of the views expressed during the discussion in the Third Committee of the General Assembly.

35. The Committee was also informed that by decision 46/428 of 17 December 1991, the General Assembly had taken note of the report of the Secretary-General on the status of the Convention and that by decision 46/430 of 17 December 1991, the General Assembly had taken note of the annual report of the Committee.

### B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

#### Seventh session

36. In accordance with the relevant recommendations of the meeting of Chairpersons, the Committee, at its sixth session, had decided to appoint individual members of the Committee to be responsible for following as closely as possible developments in one of the other treaty bodies and reporting thereon to the Committee.

37. At the 88th meeting, on 11 November 1991, the Committee agreed that the members appointed for the task referred to above should report to the Committee only if they considered it useful to do so.

38. At the 99th meeting, on 19 November 1991, Ms. Chanet reported on the activities of the Human Rights Committee and Mr. Voyame reported on the activities of the Committee on the Elimination of Discrimination against Women.

#### Eighth session

39. In connection with this sub-item, the Committee had before it General Assembly resolution 46/111 of 17 December 1991 and Commission on Human Rights resolution 1992/15 of 21 February 1992.

40. At the 108th meeting, on 29 April 1992, Mr. Sorensen reported on the activities of the Committee on the Rights of the Child.

41. By paragraph 5 (b) of resolution 46/111, the General Assembly had invited the treaty bodies to give priority attention to identifying possible technical

assistance projects in the regular course of their work of reviewing the periodic reports of States parties. In this connection, the Committee at its 113th meeting, on 4 May 1992, was informed about the programme of advisory services and technical assistance developed by the Centre for Human Rights and measures of support that could be made available to States parties to the Convention requesting assistance.

## III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

### Action taken by the Committee to ensure the submission of reports

### Seventh session

42. The Committee, at its 88th meeting, held on 11 November 1991, considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

(a) Note by the Secretary-General concerning the initial reports of 27 States parties which were due in 1988 (CAT/C/5);

(b) Note by the Secretary-General concerning the initial reports of 10 States parties which were due in 1989 (CAT/C/7);

(c) Note by the Secretary-General concerning the initial reports of 11 States parties which were due in 1990 (CAT/C/9);

(d) Note by the Secretary-General concerning the initial reports of 7 States parties which were due in 1991 (CAT/C/12).

43. In accordance with a decision adopted at its 83rd meeting, on 29 April 1991, the Committee resumed discussion on possible ways to draw the attention of States parties to the importance of adequate and timely submission of their reports in fulfilment of their obligations under article 19 of the Convention.

44. In addition to the practice of sending regularly reminders to States parties whose reports were overdue, the Committee agreed that in the future, in the case of non-reply to a certain number of those reminders, the Chairman of the Committee should address a letter to the Minister for Foreign Affairs of the State concerned. If there was no reply to that letter, the Committee could then adopt a decision, noting and regretting that the State party concerned was not complying with the obligations it had freely assumed under the Convention. That decision would be forwarded to the State party concerned and also made public. For the time being, in the case of Togo and Uganda, whose reports had been due in 1988 but had not yet been received, the Committee decided to request those States parties, through the Secretary-General, to submit their initial and first complementary reports in a single document. Accordingly, by notes verbales dated 31 December 1991, the Secretary-General brought the Committee's decision to the attention of the two States parties concerned.

45. In accordance with rule 65 of its rules of procedure, the Committee also decided to request the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue, and subsequent reminders every six months. Accordingly, fourth reminders were sent by the Secretary-General to Guyana and Peru, first reminders were sent to Brazil, Guinea and Poland and second reminders were sent to Italy and Portugal concerning their initial reports; a second reminder was also sent to China, which had been requested by the Committee at its

fourth session to furnish, by 31 December 1990, an additional report pursuant to rule 67, paragraph 2, of its rules of procedure, and a fourth reminder was sent to Denmark which had been requested by the Committee at its second session to provide additional information.

### Eighth session

46. At its 105th meeting, held on 28 April 1992, the Committee also considered the status of submission of reports under article 19 of the Convention. In addition to the documents listed in paragraph 42 above, the Committee had before it two notes by the Secretary-General: one concerning initial reports to be submitted by 9 States parties in 1992 (CAT/C/16) and the other one on first supplementary reports to be submitted by 26 States parties in the second half of 1992 (CAT/C/17).

47. The Committee was informed that, in addition to the four reports that were scheduled for consideration by the Committee at its eighth session (see sect. IV, para. 55), the Secretary-General had received the initial report of Afghanistan (CAT/C/5/Add.31), Germany (CAT/C/12/Add.1) and the United Kingdom of Great Britain and Northern Ireland: Dependent Territories (CAT/C/9/Add.10). The Secretary-General had also received additional information from Denmark* which had been requested by the Committee at its second session.

48. The Committee was also informed that initial reports had not yet been received from the following States parties: Guyana and Peru, whose reports were due in 1989; Brazil, Guinea, Poland and Portugal, whose reports were due in 1990; Guatemala, Liechtenstein, Malta, New Zealand, Paraguay and Somalia, whose reports were due in 1991. First reminders had been sent to Guatemala, New Zealand and Somalia, whose initial reports were more than 12 months overdue.

49. The Committee again requested the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more then 12 months overdue and subsequent reminders every six months.

50. The Committee also requested the Secretary-General to send reminders automatically every six months to those States parties which had been requested to furnish additional reports pursuant to rule 67, paragraph 2, of its rules of procedure and those States parties which had been requested to provide additional information.

51. In addition, the Committee recalled the decision it had adopted at its seventh session with regard to non-reply by States parties to a certain number of reminders concerning their overdue reports (see para. 44 above). In this connection, the Committee further decided that in the case of reports which were more than three years overdue, its Chairman should discuss with the representatives of the States parties concerned which had their Permanent Mission in Geneva the difficulties that prevented those States parties from

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* The information, consisting of legal texts, was made available to the Committee, but it has not been issued as a document.

complying with their reporting obligations under the Convention and the technical assistance that might be provided to overcome those difficulties. If the States parties concerned had no Permanent Mission in Geneva, the Chairman of the Committee would address a letter on the question of reporting obligations to the respective Ministers for Foreign Affairs.

52. The status of submission of reports by States parties under article 19 of the Convention as at 8 May 1992, the closing date of the eighth session of the Committee, appears in annex III to the present report.

## IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

53. At its seventh and eighth sessions, the Committee examined initial reports submitted by nine States parties under article 19, paragraph 1, of the Convention as well as additional reports requested from two States parties pursuant to rule 67, paragraph 2, of the rules of procedure. It devoted 14 of the 16 meetings it held during the seventh session to the consideration of reports (CAT/C/SR.89, 90/Add.1, 91-99 and 101-103). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its seventh session:

| | |
|---|---|
| Ecuador (additional report) | (CAT/C/7/Add.11 and 13) |
| United Kingdom of Great Britain and Northern Ireland (initial report) | (CAT/C/9/Add.6) |
| Cameroon (additional report) | (CAT/C/5/Add.26) |
| Czech and Slovak Federal Republic (initial report) | (CAT/C/7/Add.12) |
| Libyan Arab Jamahiriya (initial report) | (CAT/C/9/Add.7) |
| Uruguay (initial report) | (CAT/C/5/Add.27) |
| Australia (initial report) | (CAT/C/9/Add.8) |
| Bulgaria (initial report) | (CAT/C/5/Add.28) |

54. At its 91st meeting, on 15 November 1991, the Committee decided to postpone until its eighth session consideration of the initial report of Belize (CAT/C/5/Add.25) since the Government of Belize had been unable to send representatives to attend the meetings of the Committee when its report had been scheduled for consideration. In this connection, the Committee also invited the Government of Belize to complete its initial report by providing additional information in accordance with the Committee's general guidelines.

55. At its eighth session, the Committee devoted 7 of the 15 meetings it held to the consideration of reports submitted by States parties (CAT/C/SR.105, 107-109, 110/Add.1, 111 and 112. The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its eighth session:

| | |
|---|---|
| Luxembourg (initial report) | (CAT/C/5/Add.29) |
| Uruguay (Government's replies to the Committee's questions during the consideration of the initial report) | (CAT/C/5/Add.30) |
| Italy (initial report) | (CAT/C/9/Add.9) |
| Romania (initial report) | (CAT/C/16/Add.1) |

56. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

57. In accordance with the decision taken by the Committee at its fourth session, 2/ country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the secretariat, for each of the reports submitted by States parties and considered by the Committee at its seventh and eighth sessions. The list of the above-mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex IV to the present report.

58. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.2);

(b) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention, adopted by the Committee at its third session and revised at its sixth session (CAT/C/4/Rev.2).

59. The following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain summaries based on the records of the meetings at which the reports were considered. More detailed information is contained in the reports submitted by the State parties and in the summary records of the relevant meetings of the Committee.

## Ecuador

60. The Committee considered the additional report of Ecuador (CAT/C/7/Add.11 and 13) at its 89th and 90th meetings, on 12 November 1991 (CAT/C/SR.89 and 90).

61. The report was introduced by the representative of the State party who focused on recent events in the country. Mention was made in particular of the establishment by decree on 13 July 1990 of an international commission to look into the matter of the disappearance on 8 January 1988 of the Restrepo Arizmende brothers, aged 17 and 14. The Commission had submitted a report on 2 September 1991 to the President of Ecuador which had concluded, *inter alia*, that the brothers had disappeared while in the hands of members of the National Police, that there had been negligence in police investigations and deliberate attempts by members of the police to cover up offences related to the case; and that the brothers were no longer alive. The Commission recommended that legal proceedings should be instituted against persons suspected of having committed offences in connection with the case and that the family of the victims should receive compensation. In addition, it recommended that necessary measures should be adopted to prevent similar cases from occurring in future as well as to guarantee an investigation of other

cases of disappearance and torture and that the Ecuadorian authorities should continue to cooperate fully with the competent United Nations human rights bodies.

62. The international commission's report had also shown that in the Criminal Investigation Service (SIC), torture, arbitrary arrests and the use of cruel, inhuman and degrading treatment had been routine practices. On 2 September 1991, the President had adopted a number of measures which included the abolition of the SIC and the allocation of important financial resources to the Judicial Police for equipment, recruitment and training purposes. Under Decree No. 2694, the mandate of the international commission had been broadened so that it could hear complaints and receive information concerning human rights cases. Since September 1991, the Commission had received 31 complaints, of which three related to accusations of torture. The Government had also established the Office of Under-Secretary for Justice, whose task was to ensure that complaints of human rights abuses and constitutional guarantees were taken into account.

63. Additionally, agreements had been concluded with non-governmental organizations such as the Ecuadorian Red Cross and the Latin American Association for Human Rights providing for monitoring the procedures followed in criminal investigation centres by groups of experts with a view to safeguarding the physical and mental condition of persons under investigation; provisions had been made to ensure that individuals had access to an ombudsman paid by the State; and the investigatory commissioners from the Ministry of the Interior had been replaced by justices of the peace.

64. Members of the Committee welcomed the oral introduction by the representative of the reporting State and the additional report submitted by the Government of Ecuador. Clarification was, however, sought as to whether the Supreme Court considered that the provisions of international treaties were directly applicable to Ecuadorian domestic law and whether a legislative text establishing the independence of the judiciary existed in Ecuador. Members also wished to know how the competence of the various bodies in charge of investigations was defined; how habeas corpus worked in practice and whether it applied to detentions ordered by a judge; whether legal practice had established a distinction between amparo and habeas corpus; how the future institution of ombudsman would operate; and whether any offences were still liable to the death penalty. In addition, more information was requested regarding the provision of legal aid, the powers and working methods of the Ad Hoc Human Rights Committee of the National Congress in verifying reports of human rights violations, and concerning the appointment of magistrates.

65. Members of the Committee welcomed the disbanding of the SIC but wished to know where former members of the service were currently employed and whether the Judicial Police replacing the SIC were under the supervision of the courts. They noted that the rationalization of torture was unacceptable and that the use of extreme methods by public officials could never be justified. Torture should be prohibited whatever the stage of development of a country and whatever the nature of the offence being investigated. Members also requested details concerning the action that was being taken by Ecuador in respect of certain alleged instances of torture that had been reported by non-governmental organizations or which were being considered by the Special Rapporteur of the Commission on Human Rights on questions relating to torture.

66. With regard to specific articles of the Convention, members of the Committee asked whether, in the absence of an explicit legislative definition of torture and bearing in mind the requirement in article 4 of the Convention that acts of torture had to be made specific offences under criminal law if they were to be punishable, the provisions of the Penal Code covered all the situations of torture referred to in article 1 of the Convention.

67. With regard to article 2 of the Convention, members of the Committee pointed to the incompatibility of article 214 of the Penal Code, concerning the exemption from criminal liability of a subordinate for illegal acts under certain circumstances, with article 2, paragraph 3, of the Convention. Noting that the Supreme Court had issued an opinion in favour of amending article 214, they wished to know what steps were being taken by the Government or the National Congress to do so.

68. In relation to article 3 of the Convention, members wished to know how that article was given effect in Ecuadorian legislation and whether there had been any actual cases in which refoulement, expulsion or extradition had been refused on the grounds that the person concerned was in danger of being subjected to torture in his own country.

69. With regard to article 4, information was sought as to the number of cases of persons convicted of torture, the penalties they had been given, whether any members of the SIC had been prosecuted or were currently facing charges, and whether it was necessary to try members of the police and the armed forces by special courts also in the case of offences of torture.

70. Concerning article 5 of the Convention, members of the Committee sought further clarification as to the application of its provisions, including details of any offences committed abroad where both the perpetrator and the victim had been foreigners.

71. With regard to article 6 of the Convention, it was stated that from the information provided it appeared that the legislation of Ecuador did not fully comply with the article's requirements.

72. Concerning article 9 of the Convention, it was noted tht Contracting States to the Bustamante Code of Private International Law had an option to agree or accept certain forms of communication on criminal matters whereas, under the Convention, States parties were obliged to assist one another in connection with criminal proceedings.

73. With respect to article 10 of the Convention, members of the Committee noted that the various educational measures regarding the prohibition against torture did not seem to apply to medical personnel and suggested that the number of training and education programmes should be increased. They recalled, in this regard, that assistance could be sought from the Centre for Human Rights for that purpose.

74. In connection with article 11, further details were requested as to the rules governing interrogations, in particular those relating to access of the arrested person to a physician and a lawyer, and detention in solitary confinement. It was also asked how the right of a person held incommunicado to communicate with his lawyer, provided for in article 130, paragraph 2, of

the Penal Code, was applied in practice; whether the period of pre-trial detention, which was limited to 24 hours, was counted from the time of the detainee's arrest; whether the detainee was entitled to remain silent until he had seen a lawyer; and whether there was any provision for regular visits to persons held in custody by independent magistrates. In addition, information was requested concerning the resignation of certain prison officials in January 1990.

75. With reference to article 13 of the Convention, it was asked whether persons who lodged accusations of torture with a court or submitted a complaint to the Court of Constitutional Guarantees or to the special commissions of the Congress were provided with any form of protection by the Government.

76. Regarding article 14 of the Convention, members of the Committee requested details of the provisions made by the reporting State for the complete rehabilitation of the victims of torture and whether there had been any actual cases where compensation had been awarded to victims of torture. It was asked, in particular, whether compensation was paid directly by the State or whether victims had to file a claim against their torturers.

77. Concerning article 15 of the Convention, members of the Committee wished to receive more information on penal provisions which established that any statement extracted through the use of torture would be void and disregarded in a court of law in cases of any kind, including cases involving drugs.

78. With regard to article 16 of the Convention, further information was sought as to the conditions of detention in Ecuador and concerning relevant rules for the prohibition of acts of cruel, inhuman or degrading treatment or punishment.

79. In reply to the various questions raised by members of the Committee, the representative of the State party said that the Constitution of Ecuador took precedence over all other instruments of domestic or international law and that international instruments had to be approved by the National Congress to have the force of law. Police commissioners and officers could institute proceedings to establish that an offence had been committed, charge the alleged offender and order pre-trial detention, but only the examining magistrate was authorized to take a decision on whether an offence had been committed. The legal reform at present under consideration was designed to ensure that any criminal proceedings were brought before the competent courts from the time an inquiry had started until a ruling had been handed down. Until September 1991, the National Police had the power to institute proceedings. In the future this power would be the responsibility of the Judicial Police under the supervision of the judicial authorities. For the present, however, a transitional provision had made the National Police Command responsible for organizing such proceedings.

80. Judges of the Supreme Court were appointed by the National Congress while judges of lower courts were appointed by bodies at a higher level in the judicial hierarchy. A debate was currently in progress on depoliticizing the higher ranks of the judiciary. Former members of the SIC had for the most part been reassigned to other departments of the police force not concerned with investigations.

81. Municipal authorities took decisions on the constitutional aspects of habeas corpus when power to order a detainee's release could not be entrusted to other authorities, perhaps owing to communication difficulties in Ecuador. Mayors and chairmen of municipal councils were not, however, authorized to take any decision on the lawfulness of a warrant for arrest. Any official who refused to obey an order from such municipal authorities for the release of a detainee would be liable to instant dismissal. Amparo was a remedy for which application was made to the judicial authority immediately above the court which had ordered imprisonment.

82. The Constitution made contempt an offence and it would be necessary to bring the Penal Code into line with it. Officials were obliged to abide by the decisions of the Court of Constitutional Guarantees and the Court could dismiss or deprive of his civil rights any official who failed to do so.

83. With regard to the jurisdiction of various courts, particularly military and police courts, the representative indicated that the matter had assumed greater importance with the trial of the persons involved in the Restrepo brothers case which, according to the court, came within the jurisdiction of the Supreme Court and the ordinary law system. A draft code of penal procedure was under preparation and it would define more clearly the offences that came under the ordinary law system and those that were subject to the jurisdiction of the police court.

84. With regard to article 1 of the Convention, the representative stated that while domestic legislation did not always use the same vocabulary as the Convention, it was broad enough to enable judges to apply the latter's provisions.

85. Referring to article 2 of the Convention, the representative pointed out that there were certain circumstances, such as self-defence, which might justify human rights violations. The declaration of the Supreme Court of Justice in favour of amending article 214 of the Penal Code was intended precisely to bring domestic provisions in line with those of the Convention.

86. With regard to article 3 of the Convention, the representative informed the Committee that a decision to extradite could only be taken by the Supreme Court. Decisions on expulsion were made by the Secretary-General of the police of the province concerned, who was not a police official but a magistrate. His decision was final except where expulsion was provisional. Expulsion could not be ordered to a country where the expelled person might be submitted to torture.

87. In connection with article 4 of the Convention, the representative referred to questions relating to penalties imposed for specific cases of torture and pointed out that one of the failings of the Ecuadorian judicial system was the slowness of proceedings. A large percentage of detainees had to wait months if not years before appearing before a court and it was not unusual for the period spent in pre-trial detention to be longer than the actual prison sentence. Efforts had been made to remedy that situation, including a project, undertaken in cooperation with the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Delinquency, to improve the administration of justice by the Supreme Court.

88. Referring to article 5 of the Convention, the representative stated that Ecuadorian law could also apply to Ecuadorian nationals or aliens who committed acts of torture abroad but who had been arrested in Ecuador.

89. Concerning article 11 of the Convention, the representative explained that the contradictions regarding the duration of incommunicado detention in domestic law had been partly resolved by a judgement of the Court of Constitutional Guarantees holding that the provisions of the Constitution must take precedence and that such detention must not last longer than 24 hours. A person held incommunicado could have contact with his lawyer, as the right of defence was guaranteed by the Constitution, but no machinery to facilitate such contacts had been expressly provided for by law. Practical measures existed to assist detainees in their social rehabilitation even though specialized personnel was insufficient in that respect. Prison officials who resigned in 1990 had done so because they were dissatisfied with Ecuador's penal system. Their reports had been made known to the public through the press and had led to reform efforts, especially concerning the social rehabilitation centres.

90. Referring to article 14 of the Convention, the representative explained that although the State was required, under the Constitution, to compensate individuals for any damage suffered as a result of the operation of public services or acts performed by public officials, as yet there was no law guaranteeing either moral and financial reparation or medical rehabilitation for victims of torture.

### Concluding observations

91. In concluding the consideration of the report, the Committee took note with satisfaction of the efforts the Government of Ecuador was making to improve the judicial system and to provide training for law enforcement and medical personnel in order to combat torture. However, the Committee stated that there were certain areas in which further efforts were needed, particularly to ensure that measures involving deprivation of liberty were taken by judges and not by administrative officials. In this regard it was noted that "examining magistrates" had no judicial function and were in fact officials of the Ministry of the Interior. Additionally, it would be necessary to adapt and modify a number of provisions of domestic law; to eliminate the disparity between article 141 of the Constitution, which laid down the powers of the Court of Constitutional Guarantees, and Ecuador's penal legislation; and to reform the special legal regime.

92. The Committee was also of the view that article 25 of the Penal Code did not sufficiently ensure conformity with article 4 of the Convention; that the Penal Code should be brought into line with article 2, paragraph 3, and article 3 of the Convention; and that the law should be further developed not only regarding compensation but also in respect of providing full rehabilitation for victims of torture.

## United Kingdom of Great Britain and Northern Ireland

93. The Committee considered the initial report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/9/Add.6) at its 91st and 92nd meetings, held on 13 November 1992 (CAT/C/SR.91 and 92).

94. The report was introduced by the representative of the State party who stated that his Government, in preparing its initial report, had tried to explain as fully as possible the range of legal provisions and other measures through which the United Kingdom sought to meet its obligations under the Convention. That had not been an entirely straightforward task given that the United Kingdom comprised what was in effect three separate jurisdictions - England and Wales, Scotland and Northern Ireland. The United Kingdom took its obligations under the Convention seriously and where it had been found that further measures were needed to improve the protection of rights, legislation and procedures had been revised and amended accordingly.

95. Referring to recently enacted legislation, the representative informed the Committee that the Criminal Justice Act 1988 had added to United Kingdom law by creating a specific offence of torture based on the definition of torture contained in the Convention. The United Kingdom had also ratified the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which had entered into force in February 1989. The Police and Criminal Legislation Act 1984 which dealt with police powers, the rights of persons in police detention, police discipline and complaints against the police had also been regularly reviewed and revised since being enacted. The four codes of practice in connection with police powers which had come into force under the Act had been reviewed and revised in April 1991, thus strengthening the safeguards of persons in police detention. A code governing the tape-recording of police interviews had also been issued.

96. In addition, the Government had recently published a White Paper setting out a programme of changes in prisons. The White Paper accepted the central proposition of a report prepared by Lord Justice Woolf, following serious disturbances in six prisons in England and Wales in 1990, that security and control had to be balanced with justice and humanity. The reforms in the penitentiary system to which the Government attached particular importance were the ending, by late 1994, of the practice of "slopping out" because of the absence of integral sanitation in cells; a code of standards for accommodation, programmes and facilities to be provided in all prisons; and the appointment of an independent complaints adjudicator by the end of 1992.

97. The representative also stated that terrorism continued to be a real threat in the United Kingdom and especially in Northern Ireland. While it was still necessary to keep in place exceptional measures contained in the Prevention of Terrorism Act and in the Northern Ireland Emergency Provisions Act, there were valuable safeguards, such as the annual debate in Parliament on the renewal of the measures, following an annual review of the legislation by an independent reviewer. New safeguards had been proposed, in particular, for the questioning of terrorist suspects in Northern Ireland. In addition, the Northern Ireland "Guide to Emergency Powers" which set out the rules regulating conditions of detention, was soon to be replaced by a statutory Code of Practice. This Code would be admissible in civil and criminal proceedings governing the detention, treatment, questioning and identification by police officers of persons detained under the Prevention of Terrorism Act. The Government was also considering the appointment of an independent commissioner to monitor procedures at holding centres, with the right to visit those centres at any time of his or her choosing. The Commissioner's main task would be to ensure that the proper procedures relating to the treatment

of terrorist suspects were being followed and, more generally, that the arrangements for the detention of suspects were satisfactory.

98. Members of the Committee thanked the Government of the United Kingdom for its very full report, especially with regard to the treatment of children and persons detained under mental health legislation, and also expressed appreciation to the Government's representative for the additional information he had provided. Noting that there was a marked difference between the regime applied in England, Scotland and Wales and that applied in Northern Ireland, members of the Committee raised various concerns and questions, particularly with regard to the implementation of articles 2 and 11 of the Convention in Northern Ireland.

99. With reference to article 2 of the Convention, members of the Committee recalled that derogations from certain provisions of the Convention were not allowed even in times of emergency and wished to know, in that light, how certain provisions relating to the detention of suspected terrorists were applied. They noted in that regard that under the Prevention of Terrorism Act a person might be held by police for an initial period of 48 hours, which could be extended for a further five days, without the right to obtain independent medical advice or to have access to legal counsel during the first 48 hours, and observed that such provisions created conditions which might lead to abuses of authority by agents of the State.

100. With reference to paragraph 1 of article 2, in conjunction with article 11 of the Convention, and recalling the differences which existed in legal protection of persons charged with or suspected of offences of terrorism in Northern Ireland compared to that enjoyed by citizens in the rest of the United Kingdom, members made reference to information received from non-governmental sources which indicated that 90 per cent of cases brought before the Diplock courts, in which a judge alone conducted the trial, relied solely or mainly on confessions as evidence. That situation could put pressure on interrogators to obtain confessions and create an opportunity for conduct which could contravene the provisions of the Convention. Amnesty International had provided information on a large number of allegations of ill-treatment of persons under interrogation, particularly at Castlereagh Holding Centre, which investigations apparently did not substantiate. In that context, information was requested concerning the Independent Commission for Police Complaints, which had reviewed those completed investigations. Members of the Committee also drew attention to the prima facie case of ill-treatment of Mr. Brian Gillen during interrogation at Castlereagh and asked whether any legal or disciplinary actions had been taken against the alleged perpetrators and whether compensation had been provided to persons who had been ill-treated by interrogating officers, particularly at Castlereagh. In addition, it was noted that police authorities were reluctant to make video recordings of interrogations, perhaps out of fear that they would provide evidence of ill-treatment.

101. Members of the Committee expressed regret that the text of section 134 of the Criminal Justice Act had not been reproduced in the report, given its significance in assisting the Committee to understand the implementation of articles 1 and 4 of the Convention within the United Kingdom. In that connection, members of the Committee wished to know whether the definition of torture as contained in that Act was couched in terms identical to that of the

Convention and what the penalties were for torture or ill-treatment. They also requested clarification as to what was meant by the offence of "assault", especially under Scottish law.

102. With reference to article 3 of the Convention, members of the Committee recalled that States parties had a formal obligation not to return any person to a State where the person would be in danger of torture. In this connection, they expressed concern as to whether the grounds for refusal to extradite and return a person, referred to in the report, were sufficient to meet all the obligations the United Kingdom had assumed under this article of the Convention. They also referred to information received from non-governmental organizations expressing concern at the way decisions on refugee status were taken in the United Kingdom. Two particular cases were mentioned, involving nationals of Sri Lanka and Zaire, who had been returned to their country of origin when there had been a real threat that they might be subjected to cruel or inhuman treatment or even torture. Accordingly, further information was requested as to how reviews relating to qualification for refugee status were actually carried out and as to whether the Government was making any real attempt to ensure that immigration officers were made aware of the United Kingdom's obligations under the Convention. In addition, members of the Committee requested clarification as to the exact jurisdiction of the Secretary of State and the courts with regard to decisions taken under the terms of the Extradition Act 1989. They also wished to know what was meant by the term "possible use of exceptional leave", as it related to the assessment of claims of likely torture on return to another country.

103. In respect of articles 5 to 7 of the Convention, members of the Committee requested further information, especially with regard to the application of provisions relating to the non-extradition of a person who had committed an act of torture and the trial of such a person within the country and wished to know, in particular, what the specific provisions were in section 134 of the Criminal Justice Act 1988 concerning the jurisdiction of the courts over the crime of torture.

104. With regard to article 10 of the Convention, members of the Committee expressed concern over information received from the Howard League of Penal Reform which pointed to the absence of formal instruction for law enforcement personnel in respect of their international obligations as to the custody, questioning or treatment of arrested persons. They also expressed concern at the fact that the Government did not consider it necessary to provide training in the prohibition of torture to health care professionals.

105. With regard to article 11 of the Convention, members of the Committee asked whether prison warders were armed and what procedure was followed in the event of a serious incident, such as a prison riot. They also wished to know how the United Nations Standard Minimum Rules for the Treatment of Prisoners were implemented in the United Kingdom and what other standards were applied to persons who were in custody or who had been convicted. In addition, members requested clarification of the indication in the report that the Government was considering extending the regime operating in Northern Ireland, where there was in effect no right of silence for accused persons, to the rest of the United Kingdom. With regard to a reported 100 per cent increase from 1980 to 1990 in suicides among persons in detention, it was asked whether such statistics were accurate and whether they were a source of concern to the

Government. It was also asked whether the use of strip cells to house suicidal prisoners was considered the best way of preventing suicide and whether the Mental Health Act Commission was responsible for monitoring the mental health of prisoners as well as that of detained patients.

106. Concerning articles 12 and 13 of the Convention, members of the Committee requested clarification of the statement in the report that the provisions and practices relating to the investigation of allegiations of torture in Scotland and Northern Ireland were broadly comparable with those elsewhere in the United Kingdom. They also wished to know whether complaints against the police were dealt with by the police or by another authority; how offences committed by members of the armed forces were dealt with; whether statistics on the number of complaints of alleged offences were available; and whether such data were published in the annual Home Office Report.

107. In respect of article 14 of the Convention, members of the Committee complimented the United Kingdom on the compensation system it had established for victims of crime and asked whether the State was directly responsible for compensating a victim of torture if the torturer was insolvent.

108. With regard to article 15 of the Convention, members of the Committee noted the statement in the report that confessions made by an accused person could not be given in evidence against him if they had been obtained by oppression and asked for clarification of the term "oppression" in this context. They also wished to know whether the prohibition of the use of such confessions was part of common or statutory law and whether, in line with the scope of the Convention, that prohibition covered not only confessions but also statements in general.

109. With respect to article 16 of the Convention, it was asked whether corporal punishment in schools was prohibited throughout the United Kingdom.

110. Finally, members of the Committee asked whether the United Kingdom authorities would publish the report by the European Committee for the Prevention of Torture following its visit to the United Kingdom in spring 1990, which until now had remained confidential.

111. In his reply, the representative referred to the situation in Northern Ireland and noted that the principal power of arrest lay with the police, the powers of arrest of the armed forces in Northern Ireland being very limited. The latter could detain a suspect only for a maximum of four hours and in all cases had to transfer the suspect to a police station. Concerning the regime existing in Northern Ireland for the interrogation of terrorist suspects, he said that the need for detention for more than 48 hours had to be reviewed every 12 hours by a uniformed officer of at least inspector rank. Moreover, the interrogation of terrorist suspects was monitored by a closed-circuit television system. Written interview records had to be made, timed and signed. Detailed custody records had to be opened as soon as practicable for each person in detention and had to be reviewed periodically by a police officer. If there was a complaint of ill-treatment, a report had to be made to an officer who was not connected with the investigation. In the event of suspected use of force, a medical officer had to be called immediately and, in addition, access to a medical officer had to be provided at a set time every day. The right of access to a solicitor during police detention could only be

delayed beyond 48 hours upon the authorization of an officer of at least superintendent rank and the reasons for the delay had to be submitted to the detainee in writing.

112. With regard to the concern expressed over the law on the right to silence as provided for in the Criminal Evidence (Northern Ireland) Order, the representative stated that this Order was merely a limited measure which removed an advantage enjoyed by a person who refused to answer any questions and sought to bring a police investigation to a halt. A research programme was being carried out to determine the effects of the Order in relation to terrorist crimes and the Government would consider the results of that research. Referring to the concern expressed about trial without jury in the Diplock courts, the representative indicated that his Government accepted that that solution was not ideal but considered that in such trials appropriate safeguards were provided to defendants, such as the automatic right to appeal to a three-judge court. He also stated that a significant majority of defendants in Diplock courts pleaded guilty.

113. With reference to the allegations of ill-treatment reported by Amnesty International in November 1991, the representative informed the Committee that the allegations would be investigated and disciplinary measures would be taken, as appropriate, against the guilty parties. On the matter of the conduct of investigations into complaints of ill-treatment and the safeguard of the right to redress, the representative provided a description of the powers of the Independent Commission for Police Complaints in Northern Ireland. He indicated that the Commission's primary task was to ensure that complaints about police behaviour were thoroughly investigated and that appropriate disciplinary action was taken. Compensation might be awarded to a victim even where no disciplinary proceedings had taken place or in the absence of a finding of guilt, because the standards of proof which applied in disciplinary and civil proceedings were different. Mr. Brian Gillen had accepted the sum of 7,500 pounds sterling as compensation. With regard to the use of video recordings of interrogations, the representative stated that his Government did not have a closed mind on that point but was not yet convinced that in the particular circumstances of Northern Ireland the introduction of such recordings would not jeopardize the interview procedure.

114. With reference to articles 1 and 4 of the Convention, the representative provided the Committee with the text of section 134 of the Criminal Justice Act 1988. He also explained that the content of section 134 was very close in substance and form to article 1, paragraph 1, of the Convention and that to secure a conviction in proceedings in the United Kingdom it was enough for a person to have inflicted severe physical or mental suffering. The penalty for a person found guilty of torture was life imprisonment. In England, Wales and Northern Ireland the Attorney General's consent was required for proceedings for an offence under section 134. The Criminal Justice Act applied in Scotland where, in addition, persons guilty of torture could be prosecuted for a number of other offences under Scottish Law. Equally, in England, Wales and Northern Ireland, persons guilty of torture could also be prosecuted for one of the offences under the Offences against the Person Act 1861. The offence of assault was a common law offence.

115. With respect to article 3 of the Convention, the representative indicated that the Secretary of State was empowered to refuse extradition for reasons

other than those set out in sections 6 and 12 of the Extradition Act 1989. When the Secretary of State's decisions affected a person's fundamental right to life, they could be contested in the courts. With regard to the meaning of the term "exceptional leave", the representative explained that such leave to remain in United Kingdom territory was available to ensure protection for all persons in humanitarian cases.

116. The situation of asylum seekers in detention was closely reviewed by immigration authorities. An independent Board of Visitors had unrestricted access to all detainees and could transmit any serious complaint to the Home Secretary.

117. Concerning articles 5 to 7 of the Convention, the representative stated that the courts of Great Britain and Northern Ireland had wide extraterritorial jurisdiction to deal with any person present in the United Kingdom, regardless of the nationality of the offender or victim. A person who was not extradited would be prosecuted if there was sufficient evidence to warrant proceedings being taken. So far no proceedings had been taken for torture under section 134.

118. With respect to article 10 of the Convention, the representative explained that training for law enforcement personnel stressed the importance of never abusing their authority and never ill-treating the persons in their care. As to prison medical officers, Prison Standing Order No. 13 repeated the United Nations Standard Minimum Rules; the representative added, however, that in the light of the comments of several members of the Committee it would be sensible to see whether the current provisions in the United Kingdom adequately reflected the country's obligations under article 10 of the Convention.

119. Concerning article 11 of the Convention, the representative informed the Committee that prison staff were never armed and that in the event of a serious disturbance, which required outside assistance, the police were called in. The United Nations Standard Minimum Rules for the Treatment of Prisoners were reflected in the Prison Rules 1964, which applied to England and Wales, and similar rules which applied in Scotland and Northern Ireland. The United Kingdom applied all but a small number of the United Nations Rules and any exceptions related to budgetary or technical problems. Regarding the concern raised over the number of prisoners who had committed suicide, the representative gave statistics on the number of self-inflicted deaths in England and Wales and informed the Committee of the various initiatives or measures taken by the Government on that specific matter was well as about proposals to reform the prison system in England and Wales.

120. Prison medical officers were responsible for the mental and physical health of the prisoners. Guidance given to prison medical officers strongly discouraged the use of strip cells for suicidal prisoners, but it was recognized that it might be necessary for short periods. With regard to concerns raised as to the right to silence, the Government had recently established a Royal Commission on Criminal Justice to consider the opportunity available for an accused person to state his position and how far the courts might draw inferences from the silence of an accused person and would await the findings of the Royal Commission before considering the matter further.

121. Concerning articles 12 and 13 of the Convention, the representative informed the Committee that complaints against the police were the subject of an annual review and statistical returns. In England and Wales, the number of complaints had risen but the number of substantiated cases had dropped.

122. In connection with article 15 of the Convention, the representative referred to the definition of oppression as provided for in section 76 of the Police and Criminal Evidence Act 1984. Where it was alleged that a confession had been obtained by oppression, the court was required not to allow it to be used unless it had been established by the prosecution that it had not been obtained by such means. Section 11 of the Northern Ireland (Emergency Provisions) Act 1991 did not use the term "oppression", but explicitly referred to torture, inhuman or degrading treatment and to violence or threat of violence. The use of written statements in proceedings was governed by section 78 of the Police and Criminal Evidence Act, by article 76 of the Northern Ireland Police and Criminal Evidence Order and by the general law on the exclusion of evidence. A written statement by a witness to the police was admissible only with the consent of the accused. If the statement was contested by the defendant, the witness had to come to court and give oral testimony and if he confirmed his earlier statement in oral testimony, he could be challenged by the defence.

123. With regard to article 16 of the Convention, the representative indicated that corporal punishment had been abolished in publicly funded schools and that the matter of corporal punishment in independent schools was currently being considered by the European Commission of Human Rights in Strasbourg.

124. Finally, the representative indicated that the report drawn up by the European Committee for the Prevention of Torture following its visit to the United Kingdom in 1990 would be made public, together with his Government's reply, subject to the agreement of that Committee.

## Concluding observations

125. The Committee stated that, except for the situation existing in Northern Ireland, it could reasonably be said that the Government of the United Kingdom met in virtually every respect the obligations contained in the Convention. On the other hand, the implementation of the Convention in Northern Ireland was far from satisfactory. In that connection, the Committee noted that although Parliament every year reviewed the need to maintain the emergency regime in Northern Ireland, that regime had been in effect for nearly 20 years. The Committee recalled the obligations of States parties under article 2 of the Convention and, in particular, expressed concern over the absence in Northern Ireland of video recordings of interrogations by the police, the lack of a suspect's entitlement to the presence of a solicitor during interrogation, and the refusal of the right to silence. The Committee welcomed the proposal to establish an independent commissioner to inspect interrogation centres but pointed out that, in accordance with article 11 of the Convention, such monitoring must apply to interrogation rules as well as to methods and practices.

## Czech and Slovak Federal Republic

126. The Committee considered the initial report of the Czech and Slovak Federal Republic (CAT/C/7/Add.12) at its 93rd and 94th meetings, on 14 November 1991 (CAT/C/SR.93 and 94).

127. The report was introduced by the representative of the State party, who informed the Committee that the November 1989 revolution in his country had led to the establishment of a democratic social system and of a State governed by the rule of law. Supplementing the information contained in the report, he noted that two bills were currently under preparation, one concerning the terms of custody and the other relating to the establishment of a primarily civilian police guard to replace the Correction Corps, which had until now been in charge of enforcement of custody and prison terms. An evaluation of the skills and moral aptitude of prison staff had also been undertaken in 1990 since some of them had been involved in human rights violations before the November 1989 revolution. As a result of the evaluation, some 7 per cent of prison staff had left the prison service in the Czech Republic and a similar process was under way in the Slovak Republic. Act No. 179/1990 on the Execution of Prison Sentences, which stressed the need for greater protection of the human dignity of convicts, had also been adopted. An investigation into the situation in corrective institutions in Czechoslovakia by Helsinki Watch in late 1990 had found that despite some shortcomings in the material conditions of detention, efforts were being made by the prison system's managerial bodies to reform the conditions in prisons and no instances of violations of human rights or treatment which would be inconsistent with the provisions of the Convention had been found. The representative also stated that major reorganization of the police force was under way, involving the establishment of a Police Corps at both the Federal and the Republic level. The aim of the reorganization was to bring the police force under efficient public control which was to be exercised by members of special committees in the Federal Assembly and in the national parliaments. Recent legislative changes relating to the obligations and the duties of police officers included the principle that an order from a superior officer could not justify torture and that the offender could not evade responsibility for the crime.

128. Finally, the representative informed the Committee that his Government intended to withdraw the reservation, made at the time of ratification, to article 20 of the Convention to make the declaration required by article 22 of the Convention and to ratify the European Convention for the Prevention of Torture and Other Cruel or Degrading Treatment or Punishment. His Government also intended to support the elaboration and adoption of an additional protocol to the Convention against Torture, establishing international monitoring machinery similar to that of the European Convention for the Prevention of Torture.

129. Members of the Committee, while commending the report and the oral introduction of the representative of the Czech and Slovak Federal Republic, sought clarifications on numerous matters, particularly details of any specific provisions concerning the prohibition of torture in various pieces of legislation, including the Charter of Fundamental Rights and Freedoms of 9 January 1991. They also wished to know how the laws governing the police were to be amended; how judges were appointed and how the independence of the

judiciary was guaranteed; how the activities of the National Security Corps were regulated; how the National Councils of the Czech and Slovak Republic and of the Federal Assembly on the police would regulate the latter's activities in combating torture; how the principle of the rule of law was to be guaranteed; whether any complaints of torture or ill-treatment had been made in recent years; whether the perpetrators had been punished either by court convictions or disciplinary measures; and whether compensation had been provided for the victims.

130. Concerning the reporting State's intention to withdraw its reservation to article 20 and to make the declaration under article 22, members wished to know what legislation was to be adopted and what administrative measures would be taken to give full effect to the Convention in that regard.

131. With reference to articles 1 and 4 of the Convention, members of the Committee noted that there was no definition of the specific offence of torture in Czechoslovak penal law and they observed that the legislation cited in the report was not adequate to satisfy the requirements of those articles. They, therefore, wished to receive extracts of various penal provisions relating to the Convention in order to assess whether Czechoslovak law fully covered acts of torture as defined in the Convention.

132. In connection with article 2 of the convention, members of the Committee wished to know whether there were any specific cases in which a member of the National Security Corps had refused to obey an order from a superior on the grounds that it would mean committing a criminal offence.

133. Regarding article 3 of the Convention, members noted that the inclusion in the Convention of that article was intended precisely to cover cases that were not within the scope of the 1951 Convention relating to the Status of Refugees and asked what legal measures had been taken to implement, in particular, paragraph 2 of that article.

134. In connection with article 5 of the Convention, it was asked whether the provision contained in section 20 (a) of the amended Penal Code, whereby Czechoslovak law would be applicable in cases where international treaties applied, had precedence over the provision contained in article 20, paragraph 1, of the Penal Code, which provided that Czechoslovak law would be applicable in the case of offences committed abroad by aliens only if the offence was also punishable under the law in force in the territory where it had been committed.

135. With regard to article 7 of the Convention, clarification was requested in respect of a number of exceptions, listed in the report, to the institution of proceedings for criminal offences.

136. Concerning article 10 of the Convention, members recalled that the article required medical as well as law enforcement personnel to be educated about the prohibition against torture.

137. In connection with article 11 of the Convention, members of the Committee wished to know specifically what guarantees detained persons enjoyed and how rules and practices in that regard were kept under review; what was the

duration of pre-trial detention; and what control was exercised over the conduct of investigations by the police.

138. With regard to article 13 of the Convention, members wished to know what machinery existed for making petitions, and requested specific examples of the outcome for those who had availed themselves of that right.

139. Concerning article 14 of the Convention, members noted that full rehabilitation of victims of torture should include medical rehabilitation and that a rehabilitation centre for victims of torture had recently been set up in Prague which, it was hoped, would receive the Government's support.

140. In his reply, the representative of the State party stated that he would transmit to the competent authorities of his country the suggestion that a definition of torture in conformity with that contained in article 1 of the Convention should be introduced into domestic law. He pointed out that now was an appropriate time to do so as a completely new penal code and code of penal procedure were being prepared. As those codes were still in the drafting stage, it was difficult to give an answer to questions relating to the application of particular articles of the Convention. However, with regard to article 4 of the Convention, the representative informed the Committee that an official guilty of assault in the exercise of his duties was liable to imprisonment from two to eight years, in accordance with article 222 of the Penal Code. Legal proceedings were under way in connection with 40 cases of torture or inhuman treatment in prisons that had occurred before 1989. In connection with the events of November 1989, 35 police officers has been charged with assault.

141. With regard to the independence of the judiciary, he stated that under the legislation adopted in 1991, judges were appointed for life by parliament and could be dismissed only for disciplinary reasons.

142. In connection with article 2 of the Convention, the representative said that a police officer who refused to obey an order from a superior was required to give his reasons for doing so in a written report, which was considered by a disciplinary board or by the prosecutor.

143. Referring to article 10 of the Convention, the representative agreed that it was desirable that the supervisory and medical staff of prisons should be more familiar with the Convention and indicated that that issue was one of the authorities' concerns.

144. With regard to article 11 of the Convention, the representative said that the maximum duration of custody was 24 hours and that the police were required to inform the family of the person arrested that he was in custody. In addition, detainees could have contact with priests, representatives of humanitarian organizations or their lawyers without the presence of a third person. A detainee could only be isolated if his fitness to withstand isolation had been confirmed by a medical examination. The present maximum length of pre-trial of two months was too long and the new rules on the execution of sentences, now under consideration, would guarantee conditions of detention in conformity with international instruments.

145. Concerning article 13 of the Convention, the representative said that the Act on the Execution of Prison Sentences of 1964, as amended by Act No. 178/1990, authorized detainees to lodge complaints which were to be considered by the competent authorities as expeditiously as possible.

146. In connection with article 14 of the Convention, the representative informed the Committee that thousands of persons who had been arrested on political grounds had sufferd from torture or inhuman or degrading treatment under the previous regime. Under a court ruling, such persons were having their rights restored and were receiving compensation, although Czechoslovak law did not yet provide for the award of compensation for personal injuries sustained during the earlier period.

## Concluding observations

147. In its concluding remarks, the Committee welcomed the efforts being made by the Czechoslovak Government to fully implement the Convention. It also expressed the hope that the new Czechoslovak penal code would place greater emphasis on action to combat torture and inhuman and degrading treatment and punishment and that it would, in particular, include a definition of torture. Similarly, the new code of penal procedure should also be as much in line with the Convention as possible. The Committee expressed the hope that those parts of the penal code providing for the participation of doctors in decisions to place detainees in solitary confinement would be fully implemented so that no one was so detained without prior medical examination. It further suggested that the Czechoslovak authorities should draw up a programme which would enable lawyers, doctors and concerned officials to become familiar with the Convention. Finally, the Committee hoped that the replies which the Czechoslovak delegation had not been able to provide would be contained in the next periodic report. That report should indicate, in particular, whether the public prosecutor continued to monitor the administration of justice and contain further details on the question of the conformity of Czechoslovak legislation with the Convention, particularly its articles 3, 4 and 5.

## Libyan Arab Jamahiriya

148. The Committee considered the initial report of the Libyan Arab Jamahiriya (CAT/C/9/Add.7) at its 93rd meeting, on 14 November 1991 (CAT/C/SR.93).

149. The report was introduced by the representative of the State party, who noted that the provisions of the Convention were binding nationally and that any person was entitled to invoke them before a Libyan court. Concerning domestic legislation that offered protection from torture and other cruel, inhuman or degrading treatment, the representative referred, in particular, to article 2 of the Civil Code, which entitled any person to complain of non-observance or abuses with regard to respect for fundamental freedoms of the individual in general; article 435 of the Penal Code, which provided that any official committing or ordering torture of accused persons was liable to imprisonment; article 36 of the Code of Criminal Procedure, which provided that no person could be arrested except by the competent authorities and by order of the judicial authorities; and article 30 of the Code of Criminal Procedure, which upheld article 13 of the Convention.

150. Fundamental freedoms were further safeguarded by article 35 of the Provisional Constitutional Declaration, which stated that no legislation contrary to the basic principles of justice might be enacted. Legal guarantees and the functions of the Supreme Court ensured that justice was administered in accordance with the principles of the Provisional Constitutional Declaration and article 14 of the Convention. In that connection, article 166 of the Civil Code provided for compensation for an individual whose rights had been violated. Compensation could be requested in both civil and criminal courts.

151. With reference to the functioning of the courts, the representative stated that the People's Court was competent to hand down rulings on all matters relating to the freedoms and rights of citizens on the basis of relevant sections of part 4 of the Penal Code and where the matter in question had not previously been dealt with by the competent authorities. Recourse to the courts was free and the courts were required to ensure that all judicial safeguards, including access to defence counsel and legal assistance, were provided. Domestic legislation provided that the courts could not use confessions extracted from detained persons: such confessions were regarded as null and void and a court could inquire into the circumstances under which charges originated and statements were made. The Supreme Court could order the release of any detained person when the procedure adopted by the officials responsible for the detention was incompatible with legal provisions or where the officials had exceeded their mandate.

152. With reference to the treatment of prisoners, the representative informed the Committee, inter alia, that prison authorities were required to monitor prison conditions and the conduct of prison officials and were entitled to authorize other competent persons to inspect prisons. The Department of Public Prosecutions was authorized to take steps to prevent the ill-treatment of prisoners and to prosecute those responsible for any ill-treatment which might occur.

153. Referring to article 10 of the Convention, the representative stated that steps were being taken to ensure that relevant education and educational materials were made available at secondary and university level, particularly in law faculties.

154. Finally, the representative stated that where violations occurred, the Convention could be invoked in order to safeguard rights and freedoms. He pointed out that there had been specific cases where legal and disciplinary action had been taken against state officials who had exceeded their authority and where penalties of imprisonment and fines had been imposed.

155. Members of the Committee thanked the Libyan Government for its report and its representative for his oral statement providing additional information. Members of the Committee observed, however, that further information was necessary with regard to the legislative provisions relating specifically to torture, and that the relevant texts of the legislation should be provided. They wished to know, in particular, how the police force was appointed and educated; how judges were appointed and whether they could be removed; what rules governed the actions of prosecutors; who conducted investigations into crimes; what hierarchy existed in the courts and what were the respective jurisdictions; whether persons suspected of an offence could be held in

custody before being charged and for how long and by whom; whether such custody could be in the form of incommunicado detention; and what was the length of the period of detention which was provided for in the Libyan Penal Code in the case of acts of torture.

156. With regard to article 1 of the Covention, members of the Committee asked whether the definition of torture had been incorporated into Libyan legislation. In the context of article 2, they wished to know whether domestic legislation provided that exceptional circumstances could not be invoked as a justification of torture and whether a superior officer or official who ordered acts of torture was liable to prosecution. In connection with article 3 of the Convention, members noted that no mention had been made in the report of _refoulement_ and requested information on relevant legislation and on the officials who were responsible for handling such matters, as well as relevant statistics. Regarding article 4 of the Convention, clarification was requested as to the penalties provided by article 431 of the Libyan Penal Code in respect of acts of violence by a public official. In connection with articles 6 and 7 of the Convention, it was asked what legal regime existed in the Libyan Arab Jamahiriya to deal with a foreigner suspected of having committed torture in another country and whether the Libyan Arab Jamahiriya had universal jurisdiction to try in its territory torturers who might have committed crimes elsewhere and could not be extradited or returned.

157. In connection with article 9 of the Convention, members wished to know whether the Libyan Arab Jamahiriya had mutual judicial assistance arrangements with other countries, and if so, whether such assistance extended to the crime of torture and cruel and inhuman treatment. In the context of article 10 of the Convention, clarification was requested as to whether education and information on the prohibition against torture were offered to all categories of persons mentioned in that article. With reference to articles 11 and 16 of the Convention, members of the Committee wished to know what were the current rules and methods of interrogation and the proposed amendments to the relevant legislation, and how the penitentiary system operated.

## Concluding observations

158. The Committee was generally of the opinion that further information was necessary to assess the implementation of the Convention in the Libyan Arab Jamahiriya, particularly in respect of articles 5, 9, 13, 14 and 15. It therefore requested the Libyan Arab Jamahiriya to submit an additional report by February 1992, in accordance with rule 67, paragraph 2, of the Committee's rules of procedure, so that the Committee could discuss it at its April 1992 session. The report should be consistent with the Committee's guidelines and should contain a general section on policy, referring to the Convention article by article and indicating how it was applied in legislation and in practice. It should also state whether there had been any cases of torture and, if so, under what circumstances and how often, and what the response of the authorities had been. It would also be useful if the main legislative provisions referred to in the introductory statement of the representative of the Libyan Arab Jamahiriya would be included. The Committee recalled, in the foregoing connection, that assistance in the preparation of the additional report could be requested from the Centre for Human Rights.

159. The representative of the Libyan Arab Jamahiriya assured the Committee that his Government would comply with its request.

### Uruguay

160. The Committee considered the initial report of Uruguay (CAT/C/5/Add.27 and 30) at its 95th and 103rd meetings, held on 15 and 21 November 1991, and its 105th meeting, held on 28 April 1992 (CAT/C/SR.95, 103 and 105).

161. The report was introduced by the representative of the State party.

162. Members of the Committee welcomed the submission of the report which contained comprehensive information, and noted with satisfaction that Uruguay had accepted the optional procedures provided for under articles 20, 21 and 22 of the Convention.

163. Members sought additional information on various matters of a general nature relevant to the implementation of the Convention asking, in particular, what reasons had led Uruguay to adopt the Immunity from Prosecution Act; what effect that Act had had on public opinion; and whether the present Government had taken any steps to dismiss persons who had been involved in acts of torture under the previous regime.

164. Members of the Committee also requested details concerning the public demonstrations held in 1990 protesting the death of two young men and the action the Government had taken in response to those demonstrations. They also wished to know the outcome of the Supreme Court's inspection of Libertad Prison in November 1990; whether there were any political prisoners in Uruguay and, if so, how many such prisoners there were and who had jurisdiction over them; whether the independence of the judiciary was guaranteed; how judges were appointed, whether they could be removed and what the compulsory retirement age was; how many courts of appeal there were and whether a case could be brought before any court of appeal. In addition, concern was expressed at reported suicides at Migueletes Prison, about which members requested clarification.

165. Members of the Committee also requested a more detailed explanation of how the remedies of habeas corpus and amparo were actually applied in Uruguay. In that regard reference was made to information received by the Committee concerning, inter alia, a judgement of the Third Rota Criminal Court of Appeal rejecting an application for amparo on the grounds that the court was not the appropriate channel for challenging a general provision. Mention was also made of a ruling that a judge had no power to put an end to unfair treatment whereas, according to articles 316 and 317 of the Code of Criminal Procedure, a judge was authorized to monitor prison conditions.

166. It was noted, in the foregoing connection, that the judgement appeared to establish that amparo could not be a remedy against an unconstitutional law, whereas in most countries the reverse was true, and that most of the provisions affording protection against torture had been in force in Uruguay before 1985 but had proved inadequate. Members asked what changes in those provisions had been made since 1985 to remedy their shortcomings and whether it was intended to correct various legislative shortcomings.

167. With regard to articles 1 and 4 of the Convention, members of the Committee indicated that the provisions of the Penal Code did not appear to fully cover the definition of torture nor sufficiently penalize those committing the crime of torture. They observed, in that connection, that a clear definition of torture should be incorporated into Uruguay's domestic legislation.

168. In connection with article 2 of the Convention, members of the Committee expressed concern that Uruguayan legislation appeared to allow for the suspension of guarantees relating to the security of the person in special circumstances, which was contrary to article 2, paragraph 2, of the Convention, and requested clarification of the role of parliament and the Permanent Commission in any such suspension as well as of the special circumstances under which the Constitution could be suspended. Concern was also expressed over legislative provisions relating to the exoneration from criminal liability and punishment of persons who committed acts of torture on the order of a superior officer, which appeared to be contrary to article 2, paragraph 3, of the Convention. Members wondered how the Convention would supersede the domestic provisions on that matter in actual practice and whether, in view of the past experience in Uruguay, the formal abrogation of those domestic provisions would not be advisable.

169. In respect of article 3 of the Convention, further information on the matter of expulsion was requested. In addition, it was asked whether there had been any cases in which Uruguay had refused to expel or to return a person who was in danger of being subjected to torture, or any cases in which persons had been expelled or returned to a country that provided sufficient guarantees for their security, rather than to their country of origin.

170. With regard to articles 5 to 9 of the Convention, members of the Committee asked how the principle of aut dedere aut judicare was being implemented, whether it was possible for a foreigner who had committed an act of torture against another foreigner on foreign territory to be tried for his act in Uruguay and whether there was any mutual judicial assistance with countries with which Uruguay had no treaty relations.

171. In connection with article 10 of the Convention, members of the Committee observed that the failure to provide education and information for medical personnel regarding the prohibition against torture was a serious shortcoming, especially because, according to the Uruguayan Medical Association, some 600 doctors had been involved in acts of torture in Uruguay during the previous regime.

172. With regard to article 11 of the Convention, members of the Committee wished to know what rules governed the pre-indictment period and which authority was empowered to order arrests and to indict persons. On the matter of detention, information was sought as to whether persons could be detained incommunicado, who could order such detention, what was the maximum period of incommunicado detention or custody and whether a medical examination during custody was systematic and compulsory. In addition, members of the Committee wished to know what were the powers of the police to detain persons for inquiries into their background, how long such detention could last, and how such powers were monitored, and requested details concerning the right of detainees to a lawyer and as to the periodicity of interrogation during custody and judicial control.

173. Concerning article 12 of the Convention, members of the Committee referred to information alleging that ill-treatment was bring practised in police stations and that persons had died during custody. In that connection, they asked whether any investigations had been conducted into such cases and other complaints or ill-treatment and whether there was a police authority to monitor police activities and to ensure that complaints against the police would be examined impartially. In addition, further details were requested as to the responsibilities and powers of the Public Prosecutor's Office and as to whether that Office could arrest and indict persons and challenge decisions taken by courts. Information was also sought as to the experience of the Prosecutor's Office since the beginning of 1991 in ensuring more effective supervision of police activities.

174. With regard to article 15 of the Convention, information was sought as to whether there had been any cases in which it had been established that a statement had been made as a result of torture and what decisions had been taken by the courts. Moreover, it was asked what the rules were governing the submission of evidence and whether involuntary confessions were admissible as evidence before civil, criminal or military courts.

175. In connection with article 16 of the Convention, a brief description of the texts governing the treatment of prisoners was requested with particular reference to the separation of minors from adults, women from men and the accused from convicted persons.

176. The representative of Uruguay stated that he was as yet unable to reply to the many detailed questions raised by the Committee and requested that his Government be allowed to submit its replies in writing to the Committee at its next session.

177. In that regard, the members of the Committee drew attention to rule 66 of the rules of procedure of the Committee, according to which a representative of a reporting State should be able to answer questions which may be put to him by the Committee. They also recalled that answers were generally given by representatives of reporting States on the same day that the questions were asked. However, the members of the Committee decided, as an exception to its rules and normal practice, to request the Government of Uruguay to transmit its replies in writing to the Secretariat within one week.

### Concluding observations

178. The Committee commended the Government of Uruguay for having submitted detailed written replies to its questions by the appointed time-limit. The information supplied clearly demonstrated Uruguay's firm intention to respect its international commitments and to enforce the rule of law in the country.

179. The Committee noted, however, that there were still some problems in Uruguay with regard to the full implementation of the provisions of the Convention. In that connection, it observed that the country seemed to have a number of laws which were inconsistent with the Constitution and a number of regulations which were inconsistent with the laws. As examples, the Committee referred to Decree No. 690/980 which enabled the police to hold a suspect in custody in order to obtain information, and Decree-Law No. 14470 governing treatment in detention. The Committee expressed the hope that the authorities

of the State party would make the legislative system more consistent and repeal laws that were incompatible with higher-ranking legal provisions and with the Convention.

180. The Committee also considered that the Government of Uruguay should energetically prosecute persons guilty of torture, which continued to be practised in some cases, as well as individuals who had been guilty of committing torture under the dictatorship. It asked that detailed information on that subject and on the medical rehabilitation of torture victims should be included in Uruguay's first supplementary report, scheduled for June 1992. That report might also indicate the measures taken to resolve problems connected with the prison system which, in the absence of judicial supervision, enabled maltreatment to occur in the prisons.

### Australia

181. The Committee considered the initial report of Australia (CAT/C/9/Add.8) at its 95th and 96th meetings, held on 15 November 1991 (CAT/C/SR.95 and 96).

182. The report was introduced by the representative of the State party, who stated that it was his Government's policy to ensure, before ratifying a convention, that Australia was in a position to comply with the international obligations it would assume under it. In the case of the Convention against Torture, existing domestic law was in most respects adequate for compliance, although new legislation would be needed to ensure that the Convention was fully implemented. Acts amounting to torture would generally be covered by offences under criminal law. Victims of torture could seek compensation under various criminal injuries compensation schemes or a common law action in tort and damages could be sought for both physical injury and nervous shock. The Crimes (Torture) Act 1988 fulfilled Australia's obligations under the Convention in relation to acts of torture committed outside the jurisdiction of state and territory criminal law.

183. There were special procedures in all jurisdictions to ensure competent investigation of allegations of torture by police or prison officers. Complaints about police conduct were generally dealt with first by an internal investigation body and later reviewed or monitored by an external body. Moreover, several jurisdictions had created specific legislative schemes for investigating complaints about the police. In others, a state ombudsman had been given wide powers to investigate such complaints. Complaints of mistreatment in prisons could be made to official prison visitors or inspectors and in most states, the ombudsman also had authority to deal with such complaints. On the federal level, complaints could be made to the Human Rights and Equal Opportunity Commission.

184. Military personnel were subject to the law of the land. Even in very exceptional circumstances, when the armed forces were required to protect constitutional processes, they would be involved only after the government of a state had made a request to the Governor-General, who would then take the necessary legal measures in accordance with procedures agreed by Parliament. Military personnel held in detention were protected under the Defence Force Instructions, which gave them the right to make complaints to the officer in charge. Such complaints had to be investigated without delay.

185. Australia's security and intelligence agencies had no powers of arrest or detention and members of those agencies were not in any way exempt from ordinary criminal and civil law. The Royal Commission appointed to investigate aboriginal deaths in custody had not found that any of the deaths investigated were the result of unlawful violence or brutality by police or prison officers but had made several recommendations relating to custodial practices, sentencing and training for police and custodial personnel. The Commission had also recommended that the Government should consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights and making the declaration under article 22 of the Convention against Torture. As recommended by the Commission, Australia had acceded in September 1991 to the Optional Protocol to the Covenant and the possibility of making the declaration provided for under article 22 of the Convention against Torture was currently under discussion.

186. Members of the Committee commended the Government of Australia on its excellent and detailed report but requested clarification as to how legislation was actually applied in the Australian federal system. Information was also requested concerning the jurisdiction of federal and other courts and the division of legislative power between the central authority and the states; the mandate and powers of the Human Rights and Equal Opportunity Commission and its relationship with the different states and territories; and as to the number of posts of ombudsman, the functions of the ombudsman, and the relationship existing between the Australian and Commonwealth ombudsman.

187. With regard to article 1 of the Convention, members of the Committee wished to receive clarification about the incorporation of the definition of torture in Australian legislation. They asked, in particular, whether all forms of torture and their sequelae as referred to in the Convention were covered by Australian legislation, especially the Crimes (Torture) Act 1988.

188. With reference to article 2 of the Convention, it was asked which legislative act contained the provision that an order from a superior officer could not be invoked as a justification of torture and whether it was valid in all states and territories.

189. Concerning article 3 of the Convention, members of the Committee wished to know whether the extradition laws referred specifically to the situation where a person might be extradited to a country where there was a risk that he might be tortured. It was also pointed out that Australia's obligations under that article were not confined to persons covered by the definition of refugee, but extended to persons with well-founded fears of ill-treatment on other grounds than those listed in the 1951 Convention relating to the Status of Refugees.

190. In relation to article 4 of the Convention, members of the Committee expressed concern that a person who had committed torture or inflicted suffering might be subject to legislation which provided for penalties that varied in harshness depending on the state or territory concerned.

191. With reference to article 5 of the Convention, members of the Committee asked, in particular, whether an Australian state would have the jurisdiction

to prosecute for an offence committed outside Australia under the Crimes (Torture) Act of 1988.

192. With regard to article 6 of the Convention, it was asked whether, under the provision of paragraph 1 of that article concerning extradition for offences involving acts of torture, the principle of universal jurisdiction was applied by Australia.

193. With reference to article 8 of the Convention, it was asked whether the Convention was regarded by Australia as providing a sufficient legal basis for granting extradition to a country which had requested it.

194. With respect to article 9 of the Convention, it was asked what the scope was of the provision in Australian law whereby persons could be compelled to give evidence in relation to the prosecution of crimes in another country and whether the Mutual Assistance in Criminal Matters Act, referred to in the report, was part of federal legislation.

195. With regard to article 10 of the Convention, members of the Committee wished to know what special educational opportunities were available for medical professionals working in police stations, prisons and mental health institutions to ensure that they were made aware of their obligations to avoid ill-treatment of detainees, prisoners and patients. Information was also requested concerning training for the prevention of torture provided to police and prison officers in all states and territories of Australia. In that connection, it was observed that the staff of rehabilitation centres referred to in the report might be well qualified to provide training for medical and other professionals in connection with torture.

196. Concerning article 11 of the Convention, members of the Committee sought clarification as to how the internal review of rules and practices relating to the custody and treatment of persons in detention was carried out in practice. They also wished to know what authority was competent to decide on detention; what authority in each state was responsible for monitoring measures of detention and conditions and accommodation in prisons; whether systematic reviews of the treatment of detainees involved unannounced visits by judges to places of detention; and what federal authority was ultimately responsible for prison institutions. In addition, members of the Committee asked whether an accused person could be held incommunicado in Australia and, if so, for how long; whether an accused person had the right to communicate with his lawyer or to undergo a medical examination; within what period of time a detainee was to be brought before a judge; whether electro-convulsive therapy was part of the ordinary medical treatment given in mental health institutions; what provision was made for the review of cases of persons held involuntarily or even voluntarily in such institutions; and what protection such persons had with regard to the duration and nature of their treatment.

197. With reference to articles 12 and 13 of the Convention, members of the Committee wished to receive statistics and details of any reported cases of torture. In that connection, information was also sought on any cases of such complaints dealt with by the Human Rights and Equal Opportunity Commission.

198. In respect of article 14 of the Convention, members of the Committee wished to know, in view of the large numbers of refugees received by

Australia, whether the special rehabilitation centres referred to in the report offered social as well as medical services; whether they were financed by the state and federal authorities or privately; and how many persons benefited from such services. With reference to the matter of compensation for victims of torture, members of the Committee wished to know whether offences committed by a public official always entailed state responsibility and observed that the maximum amounts awarded as compensation were not very high and that the children of victims were not entitled to any compensation for grief.

199. With regard to article 15 of the Convention, members of the Committee pointed out that the report referred only to the non-admissibility of confessions and admissions obtained by force and not to statements of all kinds, which included evidence and expert reports, and wished to know whether there were specific arrangements made within each jurisdiction to ensure that confessions or admissions obtained by coercion would not be admissible or used as evidence in Australian courts.

200. Concerning article 16 of the Convention, it was asked whether Australia still allowed corporal punishment in schools and what legal and administrative penalties were applicable to public officials who inflicted cruel, inhuman or degrading treatment or punishment. In addition, it was pointed out that the penalty of life sentences in cases of rape could be characterized as cruel treatment and clarification was sought as to how Australia could justify such sentences.

201. In his reply, the representative of Australia referred to the division of jurisdiction between the Federation and the states existing in his country, and explained that federal areas of jurisdiction were specifically enunciated in the Constitution; all others belonged to the states. Generally, criminal law was a matter for the jurisdiction of the states. Thus, offences which constituted a violation of the Convention were punished according to the legislation of the state concerned. On the other hand, the federal Government ensured that the legislation of each state was in conformity with the obligations resulting from international commitments.

202. With regard to the Human Rights and Equal Opportunity Commission and its links with the states, the representative explained that it worked in liaison and in cooperation with related bodies in the states. If a complaint was filed with the Commission, it conducted an investigation. If the nature of the offence justified proceedings, the Commission transmitted the results of the investigation to the police of the state concerned, which determined whether the act was a violation of the legislation of that state. The fact that the Commission was a federal body guaranteed that, if necessary, all those responsible for an offence could be charged and that complaints would not go unheard. The Human Rights Commissioner was responsible for offences which were within the scope of the Convention. Each state and the Commonwealth had either an ombudsman or a body with the same powers which was authorized to hear complaints concerning both state and federal legislation. A person who was a victim of a human rights violation could therefore apply to several bodies.

203. With regard to article 1 of the Convention, the representative informed the Committee that the offence of torture was not specifically defined in the Australian Constitution and Commonwealth legislation.

204. In relation to article 2 of the Convention, the representative stated that the principle that an order of a superior or public authority could not be invoked as a justification of torture was a common law principle, although it was also embodied in some legislative texts.

205. With reference to concerns raised under article 3 of the Convention, the representative explained that any application for asylum made by a person who could not claim refugee status as defined in the 1951 Convention relating to the Status of Refugees, but who might be subjected to torture if he returned to his country of origin, was communicated to the Minister for Immigration, who could grant an entry permit for humanitarian reasons. Equally, extradition could not be granted in Australia if it involved a breach of the obligations assumed by the country under international treaties.

206. In reply to the question on the applicability of article 4, paragraph 2, of the Convention, the representative informed the Committee that the Australian legal system was a discretionary one in which the judge had the power to determine the nature of the offence and to decide the appropriate penalty in the light of the seriousness of the offence. The system also authorized the Attorney General to appeal against a penalty which was obviously inadequate. He also pointed out that current practice tended towards uniformity of sentences and that under Australian law the offence of assault included mental and psychological suffering.

207. With reference to the concerns raised in connection with articles 5 to 9 of the Convention, the representative stated that Australia had fulfilled its obligations under article 5 of the Convention to the greatest extent possible as federal law had explicitly provided that there was no legitimate excuse for acts of torture and that such acts were unacceptable whatever the circumstances. Concerning the matter of the universal jurisdiction of Australian justice, the representative indicated that any person who had committed an offence outside Australian territory was liable to the penalties provided for by Australian criminal law. The request of a foreign national who had committed a criminal offence and who had applied to stay in Australia although he would be examined in accordance with the obligations established by the Convention and the Crimes (Torture) Act 1988.

208. In connection with article 10, the representative informed the Committee, inter alia, that the training of police officers could vary from state to state, but all states had established intensive and regular programmes in which police officers received information about their statutory obligations. The federal police also had a similar programme. Equally, a service of the Ministry of Immigration provided its officials with training which enabled them to recognize victims of torture or serious injury.

209. With regard to article 11 of the Convention, the representative indicated that there were adequate guarantees for the systematic review of all provisions relating to interrogation since the conduct of a trial was totally independent of the police investigation and complaints would be made either to the ombudsman or to members of Parliament and the press. The federal and

state Governments had initiated action to apply the recommendations of the Royal Commission and the reforms being implemented were likely to be applied to all, and not just to aboriginal detainees. Police custody rules varied according to each state, the maximum duration of detention being six hours. That limit could be extended for medical reasons, to allow time to enter into contact with a lawyer or if the judge lived far away. Any statement made by a person in police custody after the expiry of the maximum period of detention was inadmissible. Thus, pre-trial detention was unusual in Australia. There was no federal prison and any person found guilty of a violation of federal law served his sentence in a state prison. Concerning the internment of mentally ill patients, no one in Australia could be detained other than by a court order. Federal rules required that a decision concerning a mentally ill person's release from an institution or the continuation of his treatment had to be taken by at least two doctors. In addition, the Human Rights and Equal Opportunity Commission was carrying out a broad study on the rights of mentally ill persons.

210. With regard to articles 12 and 13 of the Convention, the representative indicated that although the Human Rights and Equal Opportunity Commission could deal with complaints for offences within the scope of the Convention, it had never had before it an allegation of conduct amounting to a violation of the Convention. The Convention against Torture did not seem to have been invoked in Australia and, therefore, there were no statistics on cases of torture. On the other hand, all complaints against the police in 1989-1990 had been investigated and, in many cases, the court's conclusions had been in favour of the complainants.

211. With reference to article 14 of the Convention, the representative stated that he was not in a position to provide statistics concerning people who were in rehabilitation centres, but three grants had been made in 1989 for a treatment and rehabilitation programme for victims of torture and trauma in which doctors, dentists, occupational therapists, psychiatrists and voluntary associations were taking part. Financing for that programme was continuing. Moreover, a professor of medicine had been requested to draw up a report to determine the psychological and other problems that affected refugees and other victims and to define the services and assistance to be provided to such persons. In reply to concerns raised on the matter of compensation to victims of ill-treatment or torture, the representative stated that in addition to the compensation provided by law, the victim could bring an action against the person responsible and even, as appropriate, against the Government. There was also the possibility of *ex gratia* compensation, especially in cases of abusive sentencing.

212. Referring to issues raised under article 15 of the Convention, the representative said that, although legal systems and structures varied from one state to another, legislation on the gathering of evidence had not in any way amended the common law rule which prohibited the use of evidence obtained other than by lawful means. Not only were confessions or admissions obtained by torture inadmissible as evidence before the courts but so was all evidence obtained under similar conditions, including expert reports and statements.

213. In relation to article 16 of the Convention, the representative stated that corporal punishment was prohibited in most if not all public educational institutions. For those private schools which had reserved the right to apply

such punishment, certain requirements had to be met for this right to be applied in practice. Replying to the concern expressed over the severity of penalties which could be incurred for offences of rape, the representative explained that the sentences given as examples in the report were the maximum penalty. In each case sentencing was left to the discretion of the judiciary and the sentence imposed would also depend on the circumstances of the offence.

### Concluding observations

214. The Committee thanked the representatives of Australia for their precise and clear replies, as well as for their close cooperation with the Committee. It expressed the view that Australia was in the forefront of countries defending human rights and commended Australia particularly on the rehabilitation services offered to victims of torture.

### Bulgaria

215. The Committee considered the initial report of Bulgaria (CAT/C/5/Add.28) at its 97th, 98th and 99th meetings, held on 18 and 19 November 1991 (CAT/C/SR.97-99).

216. The report was introduced by the representative of the State party, who stated that the new Constitution of the Republic of Bulgaria, which had entered into force on 13 July 1991, embodied the principle of separation of powers and guaranteed the separate functioning, independence and equality of the judiciary. Moreover, the courts had been brought under the sole authority of the Supreme Judicial Council, which was competent to deal with all matters concerning the appointment, promotion, demotion and reassignment or dismissal and remuneration of judges, prosecutors and examining magistrates.

217. The representative further stated that the Constitution codified the principles of various international standards, including article 16, paragraph 1, of the Convention against Torture. He also indicated that although no special legislation existed in Bulgaria to regulate all aspects of protection against torture and other forms of cruel, inhuman or degrading treatment, the Constitution provided for many ways of dealing with that problem for which new penal and other laws would have to be adopted. Article 29, paragraph 1, of the Constitution, for example, stipulated that no person should be subjected to torture, inhuman or degrading treatment and article 30, paragraphs 2 and 3, of the Constitution provided for protection against unlawful detention of citizens and restrictions of their liberties. Extensions of the time-limit for preliminary investigations during pre-trial detention were still being allowed but questions were being raised about the legal responsibility of the Prosecutor's Office in that regard.

218. With respect to the inadmissibility of inhuman or degrading treatment, the representative noted that article 30, paragraph 4, of the Constitution provided that everyone was entitled to legal counsel from the time he was detained or charged; article 31, paragraph 2, stated that no defendant could be convicted solely by virtue of a confession; and article 31, paragraph 4, provided that the rights of a defendant could not be restricted beyond what was necessary for the purposes of a fair trial.

219. The representative also noted that some discrepancies existed between the new Constitution and the penal legislation in force. For example, Bulgaria had no specific provisions relating to the prohibition of and criminal responsibility for mental and psychological suffering. It was expected that the modernization of the penal legislation would take account of mental and psychological forms of violence and degrading treatment. Where legislative conflicts arose, the Constitution contained transitional provisions stipulating that the provisions of existing legislation were applicable unless they were contrary to the Constitution.

220. Other recent institutional changes included the establishment of the Constitutional Court on 3 October 1991 which could rule on the compatibility of the Constitution and international instruments concluded by Bulgaria prior to their ratification by parliament and the adoption of the Acts on the Supreme Judicial Council and on Local Self-Government and Local Administration. The system of courts and tribunals was also undergoing changes. A new penal code, code of criminal procedure and an act on the execution of sentences were in the process of being drafted. There was also an urgent need for new legislation to replace the Juveniles Antisocial Behaviour Act. In accordance with article 5, paragraph 4, of the new Constitution, international instruments ratified by Bulgaria under the constitutionally established procedure were to be considered domestic legislation and would supersede any conflicting domestic legislation.

221. Members of the Committee commended the Government of Bulgaria on its report and thanked its representative for the additional information provided in his oral introduction. They noted with satisfaction that the Government of Bulgaria was considering the possibility of withdrawing its reservations to the Convention. They were also interested in having details of cases, if there were any, in which a court invoked the Convention in its decisions. Similarly, members of the Committee wished to receive an outline of the future legal system in Bulgaria and, in particular, of the body which would be responsible for the enforcement of sentences and for monitoring conditions of detention. Clarification was also requested as to the role of authorities empowered to investigate crimes and of examining magistrates and as to whether prisons came under the responsibility of the public prosecutor. Members wished to receive further information relating to the monitoring of the constitutionality of laws and the organization of the judiciary and concerning medical measures of constraint that were enforced by the courts. They also requested clarification of the number of persons who were being held in police custody at present and wished to know whether the Government intended to repeal the death penalty.

222. In relation to articles 1 and 4 of the Convention, members of the Committee noted the shortcomings in existing Bulgarian legislation with respect to the definition, prohibition and punishment of all forms of torture and recalled that States parties were obliged to ensure that all acts of torture were offences under criminal law and were properly punished. Concerning article 4 of the Convention, in particular, further information was sought as to types of torture-related offences for which a person could be tried as well as concerning the penalties prescribed by article 287 of the Penal Code for officials charged with offences involving torture or other forms of cruel, inhuman or humiliating punishment.

223. With regard to article 2 of the Convention, members of the Committee wished to know what administrative measures were being taken to ensure that torture or any other form of cruel, inhuman or degrading treatment or punishment was not practised. Moreover, it was observed that the contents of article 16 of the Bulgarian Penal Code, relating to liability for acts involving torture which were carried out in compliance with an unlawful administrative order given by a superior or a public authority, did not seem clear enough to ensure compliance with the requirements of article 2, paragraph 3, of the Convention and firm enough to avoid any doubt about such an order in the mind of a subordinate anxious to respect discipline.

224. In connection with article 3 of the Convention, it was asked whether new legislation being proposed would contain an explicit prohibition of expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture.

225. Members of the Committee asked for further information on the implementation of articles 5 to 9 of the Convention, in particular on the applicability of universal jurisdiction for perpetrators of the crime of torture. They also wished to know whether the reporting State intended to revise its extradition treaties to include the offences referred to in article 4 of the Convention.

226. With respect to article 10 of the Convention, members of the Committee drew attention to the need to organize special training for the police, and for medical and other personnel and indicated that the United Nations might be able to provide assistance in that regard.

227. Concerning article 11 of the Convention, members of the Committee asked for clarification as to whether new legislation would provide for a preliminary medical examination for detainees. They also requested details of the State party's regulations relating to interrogation rules, and to methods, practices and arrangements for the custody and treatment of arrested or imprisoned persons. It was asked, in particular, whether such rules were consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners and what the proposed amendments were to article 87 of Regulation No. 5 of 1982, which allowed for the use of rubber truncheons. Statistics relating to suicides in prison could be made available.

228. With regard to article 12 of the Convention, it was asked whether the Bulgarian authorities intended to introduce a system of protection that would involve investigations whenever acts of torture came to light.

229. In connection with article 13 of the Convention, members of the Committee wished to know whether there had been any complaints by victims of torture who had been referred to by Amnesty International. They also wished to receive data on the ethnic composition of victims of torture and of persons who had been sentenced to death in the past, pointing out in that connection that the Committee had received information alleging violations of the rights of the Turkish minority in Bulgaria.

230. Referring to article 14 of the Convention, members of the Committee wished to know whether any compensation had been paid to persons who had been

victims of torture under the previous regime and whether there were any specialized institutions or measures available to ensure the full rehabilitation of torture victims.

231. With respect to article 15 of the Convention, members of the Committee noted that domestic legislation did not seem to provide that statements made as a result of torture could be used against a person accused of torture, and sought clarification.

232. Replying to questions of a general nature, the representative of the State party referred in detail to the role of the Constitutional Court, established in Bulgaria in October 1991. The court was competent to take decisions on the constitutionality of the laws. Its role was also essential in relation to international instruments to which Bulgaria was a party as well as all those instruments to which Bulgaria wished to become a party since such instruments had to be submitted for review to the Constitutional Court before being submitted to parliament for ratification. The representative stressed that the provisions of the Convention against Torture had become an integral part of domestic legislation and could be directly invoked.

233. Concerning the organization of the judiciary, the representative explained that the new Constitution had established a Supreme Court of Cassation, a Supreme Administrative Tribunal, courts of appeal, regional courts, military courts and district courts. The Supreme Court of Cassation played a role in coordinating and harmonizing jurisprudence and its decisions were binding on all other courts and members of the Government.

234. With respect to the matter of compulsory medical measures for persons who were not legally responsible, the representative stated that they were applied only on the basis of a decision by the Prosecutor's Office or the judge. The Prosecutor's Office was also responsible for monitoring the enforcement of judicial decisions and ensuring that conditions of detention were in conformity with the law. The sole responsibility for preliminary investigations lay with judges but there were no examining magistrates as such, only "investigators". Preliminary investigations were carried out by the Department of Public Prosecutions, but once a case had been brought it would be in the hands of the courts and ultimately of the Supreme Court. The state security service had been dissolved in early 1991 and since then no security official could open an investigation.

235. The Department of Public Prosecutions also played a role in supervising the way in which the law was enforced in the prisons but prisons were administratively under the control of the Ministry of Justice. Investigators no longer came under the Ministry of the Interior but belonged to a separate administrative department. The relationship between prosecutors and investigators was governed by law. It was the prosecutor's duty to ensure that the activities of investigators were in conformity with the law. Parliament had adopted a moratorium on capital punishment since 1989 but that did not mean that such a sentence could not be handed down.

236. In connection with article 2 of the Convention, the representative stated that the Constitution and Bulgarian criminal law were categorical about the right of a subordinate not to carry out an unlawful order. With regard to administrative measures taken to ensure that torture was not used, he referred

to disciplinary measures applicable to public officials found guilty of ill-treatment as well as to educational measures that sought to ensure that prison officials and staff were made aware of their obligations.

237. With respect to article 4 of the Convention, he indicated that the draft penal code and the draft code of criminal procedure, which were expected to be adopted in the first half of 1992, established penalties in keeping with the gravity of offences. Several state officials or members of the police who had committed acts prohibited by the Convention or who had committed abuses of power had been prosecuted and punished during 1990 and 1991 according to the penal provisions in force. Article 287 of the Penal Code, which related solely to crimes committed by judicial officials, was one of the provisions of Bulgarian legislation that was not expressly in conformity with the Convention.

238. Regarding articles 8 and 9 of the Convention and the measures being taken to improve their implementation, the representative stressed that no new legislative text was needed since the Convention was now directly applicable in Bulgaria. In addition, Bulgaria was about to accede to the European Convention for the Prevention of Torture and would also review agreements concluded with other countries. Mutual judicial assistance had already been practised on a very wide scale with a number of other European countries even where no formal extradition treaties existed.

239. With respect to article 10 of the Convention and the training of medical personnel about the prohibition of torture, the representative indicated that the Ministry of Health, the Ministry of Justice and the Prosecutor's Office had requested assistance from the Council of Europe and the European Committee for the Prevention of Torture to develop an appropriate programme. The involvement of the Committee against Torture in such a programme was also seen as desirable. There were several other planned initiatives, some of which had received United Nations assistance, to improve the training of prosecutors, investigators, and military and prison personnel.

240. Concerning article 11 of the Convention, the representative said that Bulgarian legislation did not provide for a preliminary medical examination of detainees but, since the Convention was now applicable nationally, that situation could only improve. Not only the Standard Minimum Rules for the Treatment of Prisoners but also the European Rules, which were even stricter, were in force in Bulgaria. A delegation of the Council of Europe that visited two Bulgarian prisons in the spring of 1990 had found no breach of such rules. However, in the past, there had been acts of brutality in Bulgarian prisons. Two prison guards had been put on trial for such offences and four others had been dismissed. The maximum period provided for in the Code of Criminal Procedure for the duration of custody was 10 days but under article 30, paragraph 3, of the new Constitution it was only 24 hours. The latter provision obviously took precedence.

241. In connection with article 13 of the Convention, the representative stated that no case of torture or ill-treatment had been reported in Bulgaria since 1989. The cases referred to by Amnesty International dated back to an earlier period and the persons concerned, who were Bulgarians belonging to the Turkish minority, had been released at the end of 1990.

242. With reference to article 14 of the Convention, the representative stated that the Bulgarian Government had allocated 120 million leva for the compensation of victims of the previous regime and referred to a series of other measures adopted for the rehabilitation of such victims.

## Concluding observations

243. The Committee thanked the representative of Bulgaria for his full and frank answers to the questions that had been raised. It also took note of the radical reforms and far-reaching changes taking place in the country. In that connection, the Committee recommended that the process of legislative reforms be accelerated and that relevant information should be included in the first supplementary report to be submitted at the end of June 1992. The Committee also expressed the hope that the first supplementary report of Bulgaria would reflect the fact that the comments and suggestions made by it during the dialogue with the State party had been taken into account.

## Cameroon

244. The additional report of Cameroon (CAT/C/5/Add.26) was considered by the Committee at its 101st and 102nd meetings, held on 20 November 1991 (CAT/C/SR.101 and 102).

245. The report was introduced by the representative of the State party, who recalled that Cameroon had ratified the Convention against Torture in June 1987 without reservations. According to article 2 of the Penal Code, treaties and agreements who had been duly ratified by Cameroon prevailed over any provision of the criminal law as soon as they had been promulgated, and there was no need, therefore, to incorporate them into domestic law before they could be applied. Cameroonian law was the result of constant efforts to combine the English and French systems inherited from the colonial past with traditional values. In the past year considerable changes had taken place and work was being carried out to bring the country's legislation into line with the deep-seated aspirations of the Cameroonian people.

246. The judiciary was based on a system of traditional courts, courts of first instance, courts of major jurisdiction and military courts. Courts of first instance were competent in penal matters to try all offences except serious crimes, while courts of major jurisdiction tried crimes and related offences. In all, there were 49 courts of major jurisdiction and some 150 courts of first instance. Military courts had jurisdiction to try persons over the age of 18 for offences laid down in the new article 5 of Order No. 72/5 of 26 August 1972, as amended by Act No. 90/048 of 19 December 1990. Since 1990 a number of offences had been removed from the jurisdiction of the military courts either because they were no longer offences or because they were to be tried by ordinary courts. Traditional courts were competent primarily in civil matters and defendants had to agree that cases should be tried by them; otherwise, the ordinary courts had jurisdiction.

247. The judiciary was an authority in its own right and its independence was guaranteed by the President, who had the power to appoint, transfer and punish judges, with the advice and assistance of the Supreme Judicial Council. Although torture was not specifically defined in the Penal Code, most types of behaviour constituting acts of torture were covered by that Code. Its

provisions were concerned more with physical violence and it sequelae than with mental and psychological suffering, but suggestions would be made to the Cameroonian authorities to adopt the necessary amendments.

248. The period of custody of suspects in Cameroon was limited to 24 hours and could only be extended by the Public Prosecutor, the maximum duration being four days. The Public Prosecutor was responsible for monitoring places of detention. During the period of custody, a suspect could contact his family, have access to legal counsel and undergo a medical examination. When charges had been brought, the accused could choose a defence counsel and was not required to make any statement in his counsel's absence. He could be held incommunicado for a period of 10 days, renewable for a further 10 days, but he was entitled to have contact with a lawyer during that period. Rules of evidence were based on the principle of the innermost conviction of the judge, who assessed the probative value of evidence and could therefore reject any confession which had been obtained through torture. Training of professionals in relation to the prohibition against torture had not yet been introduced in Cameroon.

249. Members of the Committee thanked the Government of Cameroon for the additional report which provided fuller information than was contained in the initial repoert, as well as the representative of the State party for his introductory statement. They noted, however, that certain questions posed by them during the consideration of the initial report of Cameroon had not yet been answered. In that connection, they wished to know how the Convention against Torture was directly applicable in Cameroon and took precedence over domestic legislation in actual practice. Further details were also requested concerning the independence of the judiciary, the guarantees of such independence and the powers, functions and terms of office of the Supreme Judicial Council. Similarly, further information on the Court of National Security was requested, including the age at which minors could be brought before the court, as well as details of its composition, jurisdiction and procedure. With regard to military courts, it was asked, inter alia, whether there were cases where civilians still appeared before them.

250. Members of the Committee also wished to receive more information on how the President of Cameroon was elected, on the role of the Parliamentary National Assembly and on the relationship between the judiciary and the President of Cameroon, and asked whether there had been any cases where action by the Government had influenced the decisions of the Supreme Court or local courts on matters in which the Government had an interest. In addition, they wished to know when the current state of emergency had been declared in Cameroon, for what part of the territory, and what the current situation was in that regard; whether consultation with parliament and the judiciary preceded the issuance of a presidential decree proclaiming a state of emergency; and whether parliament continued to sit throughout a state of emergency.

251. Members of the Committee expressed concern at information received with regard to 60 persons who were still being dtained without having been charged or brought before a court, following events that had occurred in Cameroon in 1984. They asked, in particular, what the legal basis was for such detention and whether such persons were entitled to habeas corpus. Similarly, they

requested information concerning or refuting reports of ill-treatment of prisoners and allegations of torture which had not been the subject of an official inquiry in Cameroon. In that connection, it was also noted that information received from Amnesty International indicated that the authorities had blocked civil actions for damages and that some persons had not been granted court hearings despite their complaints.

252. Noting that there were no specific measures incorporating the provisions of the Convention into Cameroonian domestic law, particularly in respect of the specific prohibition of the use of torture by officials, such as members of the judiciary, the police, prison staff or members of the armed forces, members of the Committee expressed the hope that torture, as defined in the Convention, would be made a specific offence under the new Penal Code now being drafted.

253. Concerning article 2, paragraph 1, of the Convention, members of the Committee wished to know whether there was an intention to make provision, under the new Penal Code, for access by detainees to a lawyer, to regulate the periods between interrogations and to require that the duration of interrogations should be recorded in a register; whether medical examinations of detainees were to be carried out by an independent physician; what the period would be within which a detained person had to be brought before a judge; and what the practice would be concerning the extension of periods of custody. It was noted, in that connection, that no mention had been made in the report of administrative detention. Moreover, it was asked what kind of contacts were permitted during the 20-day period of detention incommunicado and whether, in addition to the obligation under the Code of Criminal Procedure for the Public Prosecutor to make visits to persons held in police custody, there was also an obligation to visit prison cells. With reference to the statement in the report that persons carrying out arrests were prohibited from using force except when defending themselves against assault, clarification was sought as to what was meant by the term "defence against assault" and whether the principle of proportionality applied.

254. With regard to article 2, paragraph 2, of the Convention, members of the Committee noted that under state of emergency powers custody could be ordered, inter alia, by a minister for two months and extended for a further two months, and wished to know what guarantees were provided for persons held for such long periods in custody in respect of access to their doctor, lawyer and family. Clarification was also sought as to whether persons in custody could be held in private houses, and when held in premises other than police premises, whether such persons could be held incommunicado.

255. With regard to article 3 of the Convention, members of the Committee were interested in receiving information on specific examples of persons returned or expelled who had been able to choose their country of destination. They observed that a person could risk torture on return to his country even when his life or freedom was not threatened for any of the reasons listed in the 1951 Convention relating to the Status of Refugees, and that the Convention would be contravened if foreigners who did not meet the conditions of entry into Cameroon were returned to a country where torture was practised. Finally, in noting that extradition was ordered by decree of the President, it was asked whether such a decree would take account of the requirements of article 3 of the Convention.

256. In respect of article 5 of the Convention and the competence of Cameroonian courts to try acts of torture even if they had been perpetrated by a foreign national, it was asked what specific provision on that matter existed in the Cameroonian Penal Code.

257. Concerning article 6 of the Convention, it was observed that in weighing the need for swift and effective prosecution against the requirements of personal freedom, Cameroonian law might not be consistent with the requirements of paragraph 1 of that article, which was concerned with ensuring that custody was continued only for such time as was necessary to enable criminal extradition proceedings to be instituted. It was also pointed out that the statements in the report relating to the implementation of paragraphs 3 and 4 of article 6 of the Convention were rather vague and did not meet all the requirements of the provisions contained in those paragraphs.

258. With regard to article 8 of the Convention, members recalled that the State party, under the provisions of paragraph 3 of that article, was obliged to make offences of torture extraditable.

259. In respect of article 10 of the Convention, members of the Committee wished to know whether education and information regarding the prohibition against torture had been expressly recommended in administration of justice-related decrees, and whether the Government had taken any steps to organize training programmes to provide instruction in human rights to various occupational groups.

260. With regard to article 11 of the Convention, members of the Committee expressed concern over information indicating that there were inadequacies in the prison inspection system and that ill-treatment of prisoners continued. In that connection, they asked for further information on the Cameroonian Commission on Prison Supervision and wished to know whether the Commission published annual reports of its findings and how the Government of Cameroon intended to change the system of prison inspection. In addition, clarification was sought as to the periods of detention of suspects and their conditions of detention.

261. With reference to article 12 of the Convention, members of the Committee wished to know whether the police themselves conducted inquiries into cases of acts of torture perpetrated by the police and, if so, how impartiality was ensured. In that connection, it was noted that there appeared to be a defect in the mechanism for investigating suspected acts of torture since solidarity between the police and the gendarmerie could stand in the way of the reporting and punishment of such acts.

262. In respect of article 13 of the Convention, and especially in view of the information on allegations and details of ill-treatment received by the Committee, it was asked how many complaints of torture had been received, made public and investigated, and how many sentences had been handed down.

263. In connection with article 14 of the Convention, members of the Committee noted that no specific programme existed at present for the rehabilitation of torture victims in Cameroon and asked whether the Government intended to set up such a programme. They also sought information on how many successful actions for compensation for torture victims had been brought before the

courts and about the average amount of compensation that had been offered to them. Clarification was also sought on the matter of government liability in compensation actions.

264. With regard to article 15 of the Convention, it was observed that the provisions of that article required that judges must reject statements obtained under torture and not that judges were entitled to reject such statements.

265. In connection with article 16 of the Convention, clarification was sought as to how the provision in the Cameroonian Code of Criminal Investigation that the use of force in the process of arrest, detention or execution of a sentence was a crime was interpreted and applied.

266. In reply to questions of a general nature, the representative of Cameroon stated that although the Convention took precedence over national law, the provisions of the Convention had not been incorporated into the Penal Code and the Constitution because they had been in existence long before the Convention. However, many reforms were under way in his country and the Government was determined to take account of and respect the provisions of all the conventions to which Cameroon was a party. The Court of National Security had sole competence to try crimes and offences against the internal and external security of the State, unless such crimes and offences had been committed by minors under the age of 14. Its procedures followed those of a court of first instance. Military courts were competent to try cases of crimes committed by the military in the exercise of their duties. Civilians who were co-perpetrators or accomplices of an act committed by members of the military were not subject to the jurisdiction of the military courts.

267. The President of Cameroon was elected by universal suffrage, as were the deputies to the National Assembly. To date, elections had been held by a closed list system, but a special commission had recently been instructed to study which voting methods might best serve the interests of democracy during the forthcoming multiparty elections. The Government could influence court decisions through, for example, the transfer of judges. The Supreme Judicial Council handed down opinions of judiciary regulations but derogations to those regulations could be made by order of the President of the Republic who was free not to take into account the opinions of the Council. However, measures which would guarantee greater independence of the judiciary were currently under study.

268. Replying to concerns raised over the state of emergency situation, the representative referred to constitutional provisions and Act No. 90/047 of 19 December on the state of emergency. Article 2 of that Act, in particular, established that the state of emergency was proclaimed by presidential decree. If the situation which had led to the state of emergency continued to exist, the President of the Republic had to consult the National Assembly. There was no law, outside of a state of emergency, authorizing administrative detention. The President had recently established a commission to propose amendments to the Constitution including the provisions on the state of emergency, in order to reflect the country's recent shift to democracy.

269. With regard to the reports of non-governmental organizations on the human rights situation in Cameroon, the representative indicated that the persons

detained as a result of the attempted coup d'état in April 1984 had been tried in 1991 and that many of them had been released pursuant to an amnesty. Referring to cetain particular cases of human rights violations that had occurred recently in Cameroonian prisons, the representative expressed the Government's regrets and said that it had recently ordered the Prosecutor of Douala to open an inquiry into the arrest of the persons listed in the Amnesty International report.

270. Referring to specific provisions of the Convention, the representative informed the Committee that although the legislation in force did not contain any provisions relating to medical examinations of detained persons by independent physicians, the period of time between interrogations or the presence of a lawyer during interrogations, changes to deal with those matters were included in the draft code of penal procedure that was to be submitted shortly to the National Assembly.

271. Concerning article 2, paragraph 2, of the Convention, the representative explained that incommunicado detention could not last for more than 20 days and was a measure rarely applied. It could take place only in connection with judicial inquiry proceedings and was governed by very specific provisions which had nothing to do with emergency measures. During a state of emergency the provisions of the Penal Code and of the Code of Penal Procedure were applied normally and justice was administered according to the procedures provided for by law.

272. With regard to article 3 of the Convention, the representative informed the Committee that the extradition procedure involved arresting any person for whom a warrant of arrest had been communicated by the requesting State. The arrested person was brought before the Court of Appeal, which had eight days to decide on the admissibility of the request for extradition. If the request was found admissible, it was then for the President of the Republic to take the final decision concerning extradition.

273. Replying to the question raised in connection with article 5 of the Convention, the representative indicated that the possibility existed for Cameroonian courts to judge a foreigner who had committed an act of torture outside Cameroon. That could be done, for example, according to multilateral treaties which listed crimes in addition to those provided for in article 10 of the Penal Code.

274. With regard to concerns raised by the Committee under article 6 of the Convention, the representative indicated that some time could elapse before the information on the detention of a foreigner reached the Ministry of Foreign Affairs in Cameroon, which was the only body authorized to contact the diplomatic or consular authorities of another State. In order to fill communication gaps and speed up the communication procedure within Cameroon, a department had been set up to contact the immigration services and to ascertain whether any foreigners were being detained.

275. In connection with article 10 of the Convention, the representative informed the Committee that several schools were making efforts with regard to the training of personnel, including the Senior Police School and the Yaoundé School of Medicine. All public officials responsible for inquiries received instruction in the Penal Code. Moreover, doctors had to be familiar with the

provisions of the Penal Code because the judge sometimes had to decide on the basis of the medical report whether an offence had been committed and whether compensation should be awarded.

276. In connection with article 11 of the Convention, the representative referred, in particular, to the recent establishment of the National Commission on Human Rights and Freedoms which had been given broad powers, including the power to hear denunciations, conduct inquiries and, if necessary, to refer complaints to the competent authorities. Obstacles to the supervision of police custody by judges were due to the fact that the subordination to the judicial authorities of the judicial police forces, which had broad powers, could not always be guaranteed.

277. With reference to article 12 of the Convention, the representative indicated that inquiries into allegations of torture when perpetrated by the police were not conducted only by the police, but could also be carried out by gendarmes or examining magistrates. Whereas in the past an official report prepared by the police had been regarded as evidence in court, under the new draft code of penal procedure statements by police officers could now be challenged.

278. With regard to article 13 of the Convention, the representative informed the Committee that in 1990, 72 police officers had been dismissed for having practised torture. Moreover, under the new code of penal procedure being drafted, if a police officer was guilty of torture the victim could have him brought to trial and could obtain damages.

279. Replying to questions raised under article 14 of the Convention, the representative indicated that a victim of torture requiring psychiatric care could be attended to in a centre in Yaoundé and that there was also a centre in Yaoundé to deal with cases of torture that had led to any form of disability.

280. In reply to the point made under article 15 of the Convention, the representative stated that, as a general rule, confessions obtained by torture were not admissible in court.

281. In connection with article 16 of the Convention, the representative informed the Committee that to his knowledge the words "to use force", as contained in article 137 of Decree No. 60/280 relating to the gendarmerie, had never been interpreted by the courts.

### Concluding observations

282. In concluding the consideration of the report, the Committee welcomed the efforts made by the Government of Cameroon to respond to its questions and requested the authorities to take advantage of the opportunity afforded by the current reform of the Penal Code to amend certain provisions or to add new ones to make it possible to more effectively prevent torture from occurring in Cameroon.

283. The Committee also pointed to specific areas still causing concern in respect of the implementation of the Convention, such as the duration of police custody permissible by law and the need to provide persons in policy

custody with further guarantees of protection against abuse of power or ill-treatment; the need to guarantee the same rights to a person in administrative detention as to a person who had been deprived of his freedom according to judicial proceedings; the need to improve the provision of training and information to civilian or military law enforcement personnel, public officials, policemen and prison staff and to improve the independence of the judiciary and the supervision of conditions of detention in prisons; and the need to investigate alleged cases of torture or ill-treatment.

284. The Committee also suggested that the advisory services and technical assistance programme of the Centre for Human Rights could be called upon to assist the Government in its efforts to improve the implementation of the provisions of the Convention, particularly by formulating training programmes for the various categories of officials.

### Luxembourg

285. The Committee considered the initial report of Luxembourg (CAT/C/5/Add.29) at its 107th and 108th meetings, held on 29 April 1992 (CAT/C/SR.107 and 108).

286. The report was introduced by the representative of the State party who said that respect for human rights and fundamental freedoms was a real concern of his Government. In illustration of that point, the representative briefly described the manner in which Luxembourg was involved in the promotion of human rights at the national, regional and global levels. He also indicated that a commission on legislative reform had been formed in Luxembourg to adopt measures required by the Convention against Torture and that the Luxembourg authorities would very much welcome any observations and suggestions the Committee might wish to make in that connection.

287. Members of the Committee expressed satisfaction with the report submitted by the Government of Luxembourg. However, as the report was rather brief, they requested further clarification on a number of points.

288. With regard to matters of a general nature, members of the Committee wished to know how the provisions of international instruments were incorporated into domestic legislation and how any contradictions between provisions of the Convention and domestic law were resolved. They also requested further details concerning the legal structure, judicial arrangements and the separation of powers. Additionally, they wished to know whether there were any state security organs; whether habeas corpus existed; whether capital punishment and forced labour were still resorted to; how many prisons there were and how many persons were in prison or in detention. A breakdown was also requested of the number of persons held under different punishment regimes.

289. With reference to specific articles of the Convention, members of the Committee noted that the definition of torture as contained in article 1 of the Convention had not been incorporated into Luxembourg's legislation. Therefore, they wished to know whether domestic legal provisions in Luxembourg punished both psychological and physical torture. They also asked whether Luxembourg legislation clearly distinguished between torture and other cruel, inhuman or degrading treatment or punishment.

290. In respect of article 3 of the Convention, members of the Committee asked whether a decision on expulsion could be taken only by the Minister of Justice and what guarantees existed to ensure that a person would not be expelled to a State where the risk of his or her being tortured existed.

291. In connection with article 6 of the Convention, it was asked what provision was made for a person in custody to be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she was a national or a resident.

292. With regard to article 7 of the Convention, members of the Committee wished to know whether the State party was fully in compliance with the article, especially in respect of dealing with torture-related offences in Luxembourg even when the alleged offender was not a national of Luxembourg or had committed the offence outside Luxembourg. In that regard, details of the domestic legislation providing for such proceedings were requested.

293. In connection with article 9 of the Convention, it was asked how mutual judicial assistance was carried out in the absence of bilateral treaties.

294. With reference to article 10 of the Convention, further information was requested as to whether medical personnel and others were educated or informed about torture-related issues.

295. With regard to article 11 of the Convention, members of the Committee wished to know what measures were available for monitoring the conditions of persons under detention; whether detention could be prolonged beyond the 24-hour limit and, if so, by whose authority; whether detainees could contact both a family member and a lawyer and could be examined by a doctor of their own choosing; who took the decision to place a person in isolation and how such a decision could be reviewed; whether a person kept in isolation could contact his lawyer and could benefit from an hour of exercise out of doors per day and what medical services were available to him.

296. With regard to articles 12 and 13 of the Convention, members of the Committee asked whether the police had the right to conduct an inquiry into any allegation of ill-treatment and, if so, how such an inquiry differed from that ordered by an examining magistrate. Members also observed that the report did not contain sufficient information about the implementation of those articles.

297. Concerning article 14 of the Convention, members of the Committee wished to know whether a victim of torture could seek redress or compensation from the State party and whether a victim in such cases could also claim compensation for loss of earnings.

298. With reference to article 15 of the Convention, members of the Committee sought clarification as to the meaning of the concept of "evidence gained by wrongful and unfair means".

299. Concerning article 16 of the Convention, members of the Committee asked whether women were separated from men in prisons and whether minors were also held in prisons.

300. In reply, the representative of the State party informed the Committee that it was up to the Conseil d'Etat to determine whether existing legislation was compatible with both the Constitution and the Convention and that in the event of conflict the provisions of the Convention would prevail. He also indicated that a plaintiff could invoke the terms of the Convention in a domestic court and that further details of domestic judicial decisions relevant to the implementation of the Convention would be included in the next report.

301. In addition, he informed the Committee that the death penalty had been abolished in 1979 and that there was only one prison in Luxembourg. He also stated that the references in article 438 of the Penal Code to "hard labour" derived basically from the Code Napoléon and as such should be regarded as a survival from earlier times.

302. The representative indicated that a written reply would be given to the various questions of a general nature raised about the judicial system in Luxembourg. He also informed the Committee that the principle of habeas corpus was enshrined in the provisions which safeguarded individual freedoms. There was no state security police in Luxembourg and the entire police force was administered by the Ministry of Justice.

303. With regard to article 1 of the Convention, the representative of the reporting State informed the Committee that neither the Constitution nor the Penal Code provided for a definition of torture. Luxembourg law did not differentiate between torture and ill-treatment but there clearly was scope for a more systematic interpretation which would distinguish between ill-treatment and physical or mental torture.

304. Concerning article 5 of the Convention, the representative stated that some exceptions were allowed in Luxembourg to the principle of territoriality in criminal law. Provision was also made for the apprehension in another territory of a person who had committed an offence against Luxembourg law. However, it was unfortunate that no arrangements had been established for cases in which a Luxembourg citizen sought by the authorities of another State for an offence relating to torture might face penalties more severe than those provided under the law of Luxembourg itself.

305. With reference to article 9 of the Convention, the representative of the reporting State said that Luxembourg could make appropriate arrangements with other States in regard to the supply of evidence and other assistance if the political, legal and penitentiary regimes in the country concerned were acceptable and the country had no known record of systematic violations of human rights.

306. In connection with article 10 of the Convention, the representative said that he believed the training of medical personnel would conform to the provisions of the Convention but that the matter would be checked into further.

307. With regard to articles 11, 12, 13 and 15 of the Convention, the representative of the reporting State said that new provisions on detention in custody had been introduced in 1989 pursuant to which the period of custody could not exceed 24 hours; the criteria relating to preventive detention involved such factors as the likelihood of flight by an alleged offender and

the need to keep preventive detention proportionate to the likely penalty for the alleged offence; the State Prosecutor could require fingerprints to be taken of a detainee or a search to be undertaken for dangerous objects, if necessary, but a detainee was equally entitled to request an independent examination by a doctor of his or her own choosing if allegations of ill-treatment were raised. Even under a strict regime of detention, detainees could participate in some communal activities and had a permanent right of access to their legal representatives. Complaints concerning the conditions of detention could be referred to the Director of Public Prosecutions. The representative also said that further information on those matters would be provided to the Committee in the future.

308. With regard to article 16 of the Convention, the representative of the reporting State informed the Committee that men and women were kept in separate quarters and minors were not kept in custody.

### Concluding observations

309. The Committee thanked the Government of Luxembourg for its report and the replies offered by its delegation. It was noted that according to the representatives of Luxembourg and the information contained in the report, torture did not exist in Luxembourg. It observed, however, that the report was not fully comprehensive and that Luxembourg legislation was not in conformity with all of the provisions of the Convention. Accordingly, the Committee requested that more detailed answers to certain questions be provided in the first supplementary report, to be submitted by Luxembourg by the end of October 1992. In that connection, special reference was made to the following matters: the need for a legal definition of torture (article 1 of the Convention); the need for further clarification as to the applicability of article 3 of the Convention under domestic legislation; measures required to close any possible loopholes in domestic legislation (articles 4 to 8 of the Convention); and measures taken to prevent torture, investigate alleged complaints of torture or ill-treatment and ensure redress to victims of such violations (articles 10 to 14 of the Convention).

### Italy

310. The Committee considered the initial report of Italy (CAT/C/9/Add.9) at its 109th and 110th meetings, held on 30 April 1992 (CAT/C/SR.109 and SR.110/Add.1).

311. The report was introduced by the representative of the State party, who emphasized that torture was not specified as an offence by the Italian Penal Code. In recent years, sporadic and isolated episodes of violence being used by law enforcement officials had been reported and had given rise to legal proceedings involving particularly severe sentences and disciplinary measures against the culprits. Italy was also discharging its obligations in the matter of action to combat torture within the European framework and was about to publish the report prepared by the European Committee for the Prevention of Torture following its recent visit to Italy. Lastly, Italy made a substantial annual contribution to the United Nations Voluntary Fund for Victims of Torture.

312. The members of the Committee welcomed the report of Italy and stressed that the presence of a high-level delegation demonstrated the importance attached by the Italian Government to the struggle against torture in all its forms.

313. With regard to the constitutional and legal framework for the application of the Convention, members of the Committee requested additional information on the place of the Convention in the Italian legal order and the way in which Italian internal law had been adapted to the obligations deriving from the Convention by the ratifying instrument, Act No. 498 of 3 November 1988. They asked how possible conflicts between the provisions of the Convention and those of subsequent legislative texts were resolved; whether individuals frequently invoked the Convention in the courts; whether reference was made to the provisions of the Convention in judgements of the Italian courts; whether there was an ombudsman in Italy; and whether there were military courts or a state security court. Additional information was also requested on the provisions of the new Code of Penal Procedure adopted in 1989; the competence and recent activities of the Interministerial Committee for Human Rights; the role of the "citizens' advocates" recently introduced; the circumstances in which a state of emergency could be declared and the rights which might be subject to derogation during such periods; and the conditions for the appointment and dismissal of judges. Further information was also requested on the jurisdiction, composition and activities of the Freedom Court.

314. With regard to article 1 read in conjunction with article 4 of the Convention, members of the Committee expressed regret that there was no definition of torture in Italian criminal law. The direct applicability of the Convention in internal law was not a sufficient guarantee, since the Convention did not specify the offence or applicable penalties. In addition, domestic legislation did not seem fully to cover the relevant provisions of the Convention, particularly in regard to mental or psychological torture. In that connection, it was asked whether the offences mentioned in paragraphs 36 to 38 of the report were prosecuted ex officio and what penalties were incurred. Clarifications were requested on a bill currently under consideration whereby, in order for an act to be punishable, it must have been committed by a public official and on the arrangements governing ex officio prosecution within the framework of disciplinary proceedings.

315. With regard to article 2, paragraph 1, and article 11 of the Convention taken together, members of the Committee referred to a number of reports from non-governmental sources mentioning cases in which provisions of the Convention had allegedly been violated. It was asked what had been the result of the inquiries conducted following the incidents said to have occurred in the Sollicciano prison in Florence and the Fuorni prison in Salerno. Similarly, it was asked whether the circumstances of the death of Alessandro Ruver in the Regina Coeli prison in Rome and the violence allegedly inflicted on Daud Addawe on Rome police premises had been elucidated. Information was also requested on incidents in which immigrants had apparently clashed with law enforcement officers.

316. Members of the Committee asked how Italy implemented article 2, paragraph 3, of the Convention, under which an order from a superior officer or a public authority may not be invoked as a justification of torture.

317. With regard to article 3 of the Convention, members of the Committee asked how possible conflicts between the political and the judicial authorities over questions of extradition were resolved.

318. Clarifications were requested on articles 7, 9 and 10 of the Penal Code, which seemed to apply the provisions of articles 5 to 7 of the Convention only partially. Questions were also asked concerning the application of the principle of universal jurisdiction to action to combat torture.

319. Additional information was requested concerning the implementation of articles 8 and 9 of the Convention, and in particular the direct applicability of those provisions in Italian internal law. Clarifications were also requested on the practical application of the principle mentioned in the report according to which the authorities reserved the right not to extradite an individual when he was liable to be subjected on his return to treatment constituting a violation of his fundamental rights. In particular, it was asked whether, by virtue of that principle, a foreigner liable to incur the death penalty in his own country could be extradited to it. Lastly, it was asked how many foreigners had been expelled or extradited during the last five years.

320. In connection with article 10 of the Convention, members of the Committee requested additional information on the training of law enforcement and medical personnel. It was asked whether there were programmes for the training of prison and medical personnel and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Principles of Medical Ethics were disseminated.

321. With regard to article 11 of the Convention, members of the Committee requested information on the rules concerning the conduct of police interrogations, investigations and incommunicado detention of prisoners; the conditions in which a prisoner could make an appeal concerning his conditions of detention; the duration of police custody and preventive detention; and the possibility for a person to have a medical examination after his arrest and to communicate with his family and a lawyer. It was also asked whether police interrogations were covered by precise instructions and were recorded; whether a procedure similar to habeas corpus existed in Italy; whether untried and convicted prisoners were separated; whether there was a body responsible for supervising conditions of detention and, in particular, whether judges made unannounced visits to prisons; whether dangerous prisoners were subject to a special regime, such as incommunicado detention; what measures could legally be taken to avoid violence in prisons; and whether it was compulsory for prisoners to work.

322. With regard to articles 12 and 13 of the Convention, members of the Committee asked whether complaints had already been submitted concerning acts of torture and, if so, whether a rapid investigation had been conducted into such cases and with what results; whether the persons concerned had been suspended from their duties during the investigation; whether the rules concerning the defamation of state officials were not likely to discourage possible denunciations of torture cases; and whether allegations of acts of torture or cruel, inhuman or degrading treatment concerning Italy had been examined by the European Court of Human Rights. Clarifications were requested on the statement in the report that investigations conducted following

violence allegedly committed against prisoners were covered by the law of secrecy. Lastly, members expressed concern over the length of criminal or disciplinary proceedings in cases involving presumed violence.

323. With regard to article 14 of the Convention, members of the Committee requested clarifications on the conditions in which the victim of an act of torture could obtain redress, particularly when the offender was a public official. In particular, it was found regrettable that Italian legislation did not provide for a general system of compensation by the State for victims of offences but only an obligation of redress limited to the individual responsible for the offence. It was emphasized that such a state of affairs was generally prejudicial to possible victims of torture who, very often, were not able to identify their torturers or to bring legal proceedings. It was also asked whether rehabilitation programmes for victims had been established.

324. With regard to article 15 of the Convention, members of the Committee asked whether a statement obtained through torture could be adduced as evidence in proceedings.

325. Lastly, members of the Committee welcomed the undertaking by the Italian authorities to publish the report prepared by the European Committee for the Prevention of Torture following its recent visit to Italy.

326. In his reply, the representative of the State party stated that conformity with the provisions of international human rights instruments was assured by adherence to the principle that such obligations prevailed over domestic law. Meeting obligations under such instruments was the responsibility of the Interministerial Committee for Human Rights. There was no Office of an ombudsman in Italy but a similar service was provided by a special section of the Criminal Court called the Freedom Court, whose magistrates were empowered to assist in cases where administration was dilatory or neglectful of a citizen's legitimate interests. The Freedom Court was also competent to re-examine, within a period of eight days, any decisions which restricted individual freedom. He added that appointment, transfer and disciplinary matters concerning judges were supervised by the Higher Council of Magistrature whose independence was enshrined in the Constitution and which was chaired by the President of the Republic.

327. With reference to the allegations of ill-treatment reported by the press and non-governmental organizations, the representative admitted that occasional instances of alleged ill-treatment by the police were inevitable. In general, however, members of the police acted with a high sense of responsibility. He briefly described several cases of alleged ill-treatment by the police, in which the judges found no ground for prosecution. Regarding the specific case of a person who had recently died in custody, he said that an investigation had been initiated by the Government Procurator's Office within two days. Details had, however, not yet been released since the matter was sub judice. In other cases of incidents at prisons, investigations had been initiated by the Government Procurator's Office; one case had been closed and the investigation in another case was not yet completed. The Department of Penal Investigation had also instituted proceedings against two prison officers.

328. With regard to articles 1 and 4 of the Convention, the representative recalled that torture was not dealt with as a specific offence in Italy's legal system. The use of torture was contrary both to the fundamental principles of Italian law and to those recognized by various international instruments such as the Convention, the International Covenant on Civil and Political Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, whose provisions had been introduced into the Italian legal system. Moreover, the principle whereby every individual deprived of his freedom must be treated humanely was included in article 27 of the Italian Constitution and Italian legislation already made sufficient provision for cases that could be assimilated to the concept of torture in its broadest sense. The Convention had been ratified by a special Act of Parliament in order to fill the gaps in the Penal Code and to take account of the definition of torture in the Convention. Determining whether mental torture had occurred was up to the courts.

329. Regarding article 2, paragraph 3, of the Convention, the representative said that, according to article 51 of the Penal Code, acts undertaken on behalf of a public authority, if unlawful, were punishable.

330. Referring to articles 5 to 7 of the Convention, the representative emphasized that in Italian law the principle *aut dedere aut judicare* prevailed and was applicable in cases of extradition. It was, however, up to the political authorities to determine whether an extradition order should be carried out. Such an order would not be deemed acceptable if the accused person might be subject to the death penalty in the country of jurisdiction or if the offence was of a political nature.

331. With reference to article 10 of the Convention, the representative said that particular attention was being given to ensuring that those responsible for enforcing the law were familiar with human rights priorities. A textbook had thus been prepared with a view to promoting greater awareness in police academies of the relevant aspects of constitutional and criminal law. The Police Department was responsible for recruitment and training, including programmes to inform law enforcement agents about human rights.

332. Referring to articles 11 and 14 of the Convention, the representative explained that preliminary investigations should not normally exceed 18 months. In certain very serious or complex cases, such as those involving terrorism or foreign jurisdiction, the Office of the Public Prosecutor was entitled to request a period of investigation in excess of the statutory 18 months. After the expiry of the maximum period for preliminary inquiries, the examining magistrate set a period of 10 days for submission of the final report, failing which the case was closed. Responsibility for ensuring that human rights were guaranteed in places of detention lay with magistrates. Furthermore, although there was no system for compensating persons claiming that they had been ill-treated while in detention, there was an advisory board to investigate conditions of custody, which was authorized to initiate special inspections. Detention in isolation was permitted only for health reasons and normally involved exclusion from communal activities for a period of up to two weeks. As for incommunicado detention, a time-limit of 24 hours was imposed.

333. Any person held in custody had to be duly informed of his rights, including the right to a defence counsel, and his family had to be informed

immediately if he so wished. Unless there was an order for release or removal to a medical institution, all detained persons had to be brought before a magistrate within 24 hours. Specific instructions about the conduct of interrogations, especially with regard to the first phase, had been issued. Furthermore, any interrogation had to be conducted in the presence of a judge and officially recorded.

334. With regard to articles 12 and 13 of the Convention, the representative stated that disciplinary procedures should normally be completed within a period of 90 days and that provision was made for the suspension of a law enforcement official during the period of the proceedings. Replying to another question, the representative emphasized that only four cases of alleged ill-treatment had been brought to the attention of the European Court of Human Rights. Of those, two had been withdrawn, one had been deemed inadmissible, and in one case no violation had been found.

335. As concerned article 15 of the Convention, the representative explained that article 191 of the new Code of Penal Procedure provided that evidence obtained by illegal methods could not be used in any proceedings.

## Concluding observations

336. In concluding the consideration of the initial report of Italy, the Committee expressed its appreciation to the high-level Italian delegation for having engaged in a very fruitful dialogue. Replies had indeed been received to many of the Committee's questions. However, a few questions relating, *inter alia*, to the organization of the legal system, the new Code of Criminal Procedure and the expulsion or extradition of foreigners remained to be answered or completed in the first supplementary report. The establishment of the Freedom Court and of the Interministerial Committee for Human Rights were considered to be appropriate examples of Italy's commitment to human rights and its international obligations.

337. The Committee nevertheless considered that its concerns had not been fully allayed, especially with regard to the method of integrating international standards into domestic law by way of the Act of Ratification. It observed that consideration should be given by the Italian authorities to the possibility of including a definition of torture in its legislation and making all acts of torture punishable by appropriate penalties. Attention should also be given to speeding up domestic remedies. The Committee was concerned at the absence of a system of compensation for victims and it was emphasized that, in accordance with the Convention, the State should be held civilly responsible for the acts of its servants. It was also suggested that special chapters of the Convention be included in the handbooks issued to Italian police personnel and made available to members of the medical profession.

338. Lastly, the Committee said that it had no doubt that torture was not systematically practised in Italy. The various cases referred to during the consideration of the report seemed to be more in the nature of cruel, inhuman or degrading treatment than acts of torture within the meaning of the Convention. Nevertheless, the authorities had to deal with such cases energetically and within the statutory limits, and references to measures taken in that respect should be included in the first supplementary report of Italy.

## Romania

339. The Committee considered the initial report of Romania (CAT/C/16/Add.1) at its 111th and 112th meetings, on 1 May 1992 (CAT/C/SR.111 and 112).

340. The report was introduced by the representative of the State party, who referred to the amendments incorporated in the Penal Code and the Code of Penal Procedure, and to the adoption of the new Constitution in December 1991. He said that the work of legislative reform was continuing, particularly with regard to the organization of the judicial system, the execution of penalties and the introduction of new, non-custodial types of penalty. He stated that specialized human rights departments had been set up within various ministries and the Public Prosecutor's Office, together with an interministerial committee responsible for coordination between those departments. He mentioned the activities of non-governmental organizations in the area of human rights; despite those positive changes, however, there were regrettably still some after-effects of the old regime and abuses by state officials.

341. The members of the Committee congratulated the Romanian Government on the quality of its report which, although relatively brief, showed that Romania had indeed adapted its legislation to the Convention. They expressed their satisfaction at finding that Romania had faithfully incorporated in its legislation the terms used in the Convention to define torture, and had established appropriate penalties for the offences provided for. By incorporating the Convention in its legislation word for word, Romania had acquired the best possible means of combating torture. The members of the Committee also expressed their appreciation for the frankness with which the Romanian authorities had acknowledged the continued after-effects of the old regime. In that connection, some members of the Committee emphasized that attitudes still had to be changed, particularly with regard to conditions of detention and among the police, and stated that they had received reports of a number of individual cases of ill-treatment. Members of the Committee requested further information of a general nature, in particular on the organization of the judicial system and the court hierarchy in Romania, on the competence of the military courts, on the status of the judiciary and the appointment and dismissal of judges and prosecutors, on relations between the legislature, the executive and the judiciary in accordance with the provisions of the new Constitution, on the role of the People's Advocate, and on the organization and powers of the police forces. Clarification was also sought concerning the procedure which had led to the dismissal of several thousand policemen and a number of prosecutors or judges, and the amnesty granted to former political prisoners. Statistical information was requested on specific cases of torture and other ill-treatment.

342. In connection with article 3 of the Convention, members of the Committee requested clarification concerning the possibility of appealing against an expulsion order or being granted a stay of execution.

343. With regard to article 5 of the Convention, members of the Committee requested details concerning the application of the principle of universal competence in Romanian law. It was noted in particular that, given the fact that articles 5 and 6 of the Penal Code were in conformity with the

Convention, a bilateral treaty derogating from those articles would represent a derogation from the Convention.

344. On article 6 of the Convention, it was observed that the provision of the Romanian Code of Penal Procedure to the effect that it was for the prosecutor to notify the detention order to the diplomatic mission of the person charged did not seem to be consistent with article 6, paragraph 3, of the Convention. Clarification was also sought concerning the measure whereby a person suspected of an ordinary offence could be compelled to remain in his locality of usual residence. Details were also requested concerning the procedures for extending the limit on police custody of 24 hours.

345. Referring to article 8 of the Convention, members of the Committee asked whether the provisions of that article were directly applicable in Romania.

346. In connection with article 9 of the Convention, information was requested on the specific procedures for mutual judicial assistance. It was asked whether Romania had concluded extradition treaties with countries to which it was not bound by an international convention.

347. With regard to article 10 of the Convention, stress was laid on the particular importance of that article in the light of the situation in Romania, where education and training represented means of changing attitudes impregnated with the after-effects of the old regime and spreading a genuine human rights culture to all levels. Members of the Committee asked whether there were training programmes for medical personnel.

348. On article 11 of the Convention, information was requested on interrogation procedures and whether incommunicado detention was authorized. Details were requested on the procedures for supervision of acts in criminal proceedings. Questions were asked about the role and respective spheres of competence of the prison administration and the Office of the Public Prosecutor in the conduct of periodic inspections to ascertain whether prison establishments conformed to legal provisions.

349. With regard to articles 12 and 13 of the Convention, details were requested about the status and functions of the prosecutor and the means at his disposal to take action against abuses by prison service personnel. Details were also requested about the procedures for lodging complaints in the event of torture. It was asked whether the police had ever been called upon to take action in the case of a complaint of torture. A question was asked about the number of proceedings initiated against police officers and the sentences handed down. It was noted that Romanian legislation did not provide for special measures to ensure the protection of complainants or witnesses against ill-treatment.

350. In connection with article 14 of the Convention, clarification was requested concerning the compensation and rehabilitation offered to torture victims. Clarification was also sought concerning the direct responsibility of the State in cases of torture perpetrated by its agents. Questions were asked about the possibility for a criminal court to rule on a civil action, and it was asked whether the victim could appeal to the court if the prosecutor decided not to initiate proceedings for lack of evidence. Emphasis

was also placed on the need to establish a centre for the rehabilitation of torture victims in Romania.

351. With regard to article 15 of the Convention, members of the Committee asked whether the provisions of that article were directly applicable in Romania. Inquiries were made about the procedure with regard to evidence. It was asked whether judicial decisions had included cases where confessions obtained through torture had been ruled inadmissible. It was also asked at what point the lawyer intervened in the pre-trial proceedings.

352. Concerning article 16 of the Convention, general information was requested on prison administration.

353. In reply to the questions raised by members of the Committee, the representative of Romania provided information on the draft bill on the organization of the judiciary. The legislation being drafted would abolish an instance inherited from the former dictatorship, which still allowed the President of the Republic extraordinary recourse against decisions. The competence of military courts would be restricted to offences by military personnel and against property of the armed forces. Members of the judiciary, currently appointed by the Minister of Justice, would, according to the draft bill, be appointed by the President of the Republic on the advice of the Supreme Council of the Magistrature. Disciplinary matters, currently dealt with by a court of high-level judges, would be a matter for the Magistrature. According to provisions of the new Constitution, judges were independent and irremovable. The authority of the Ministry of Justice was basically administrative and it was not entitled to issue instructions to prosecute in a given case. It was the function of the Office of the Public Prosecutor to examine and, if necessary, review the legality of decisions taken by the courts. On the question of amnesty, the representative explained that a decree-law promulgated shortly after the revolution of December 1989 covered, *inter alia*, persons convicted during the previous regime of genuinely political crimes, often disguised by those in authority under other charges. Concerning police officers who had been dismissed, it was stated that measures taken against them had been of an administrative nature, but that some had been tried and sentenced for specific offences. In addition, more than 75 per cent of the previously incumbent regional prosecutors and their deputies had been dismissed and a new system of competitive examinations had been instituted in order to ensure the recruitment of a genuinely independent judiciary. With regard to the organization of the police, a law was currently being drafted. The previous state police, the *Securitate*, had been abolished and the sole body concerned with state security would be the Information Service. The representative also referred to the important role played by the People's Advocates, responsible for ensuring that the rights of the individual citizen were duly defended. Concerning actual cases of torture, no statistics were available but some alleged cases were being investigated.

354. With regard to article 3 of the Convention, the representative pointed out that under the Constitution any person had the right of recourse to defend his legitimate rights and interests; there was no express provision, however, on the question of expulsion.

355. In connection with article 5 of the Convention, the representative stated that articles 3 to 9 of the Romanian Penal Code contained provisions which

allowed the establishment of state jurisdiction. Under article 4 of the Romanian Extradition Law, the extradition of Romanian citizens, or of non-Romanian citizens domiciled in that country, was not permitted. Therefore, Romanian courts were competent to deal with the offences concerned.

356. In his reply concerning article 6 of the Convention, the representative explained that the requirement for a suspect not to leave the area was a purely preventive one, intended to ensure the suspect's presence during investigations, and applicable for a maximum period of 30 days. Such measure did not involve house arrest or surveillance.

357. In respect of article 8 of the Convention, the representative indicated that its provisions were directly applicable in Romanian law. He added that the bilateral extradition conventions in existence prior to Romania's adhesion to the Convention normally provided for extradition to be granted in cases involving a penalty of at least one or two years' imprisonment, and that torture was covered in such provisions.

358. With regard to article 10 of the Convention, the representative agreed that much needed to be achieved in that regard and that Romania must strive to overcome its shortcomings where application of that article was concerned.

359. Referring to article 11 of the Convention, the representative acknowledged that Romania still faced great difficulties in funding improvements in many spheres, including penitentiary institutions. Some 42,000 detainees were held in premises whose total capacity was 30,000. However, efforts were being made to improve conditions, and the administration of prisons had been transferred in 1991 from the Ministry of the Interior to the Ministry of Justice. A new law on sentencing was being drafted, which would conform to relevant international provisions. Regarding the supervision of criminal proceedings, the representative provided information on the tasks of the prosecutor as laid down in the Code of Penal Procedure. He referred to the several types of prosecutors, each with his special field of supervisory expertise. The Code of Penal Procedure set forth rules for the administration of evidence during criminal proceedings, but contained no detailed rules regarding interrogation tactics. Monitoring of prisons or police premises used for preventive detention usually took place on a monthly basis. In addition, supervision was carried out by the prison authorities and by judges.

360. Concerning articles 12 and 13 of the Convention, the representative explained that the military court was competent to deal with complaints against police and other officers. The prison administration was required to inform the prosecutor immediately in the event of a detainee lodging a complaint. There were no specific regulations to protect complainants or witnesses but the provisions of the Code of Penal Procedure regarding threats and ill-treatment were applicable in such cases. Furthermore, new legislation was envisaged in that regard. As to the role of the police concerning criminal proceedings in cases of torture, the representative said that the police never conducted criminal proceedings in such serious cases, since the prosecutor himself was entrusted with investigation. He added that many non-governmental organizations submitted reports containing allegations of abuses. The Ministry involved monitored the cases, tried to resolve them and replied to the non-governmental organizations. Some 15 cases of official misconduct were currently under investigation.

361. Turning to article 14 of the Convention, the representative explained that the State could bear civil liability for acts committed by its agents. A victim of an act of torture could lodge complaints to the Attorney-General of the Republic. In general, criminal proceedings were applicable against the State and the person found guilty.

362. With regard to article 15 of the Convention, the representative stated that the provisions of that article were directly applicable in Romanian law. Any confession could subsequently be retracted or invalidated by other evidence, and was not regarded as irrefutable evidence. Confessions obtained under duress were null and void.

363. Concerning article 16 of the Convention, the representative pointed out that although the existing law on penitentiary institutions was old, it conformed to the provisions of relevant international instruments in a number of respects, such as the separation of men and women and the treatment of minors.

## Concluding observations

364. In concluding the consideration of the report, the Committee commended the Government of Romania for its determination to comply with the Convention, as evidenced by the new institutions and legislation introduced, and wished it success in overcoming the problems left by the former regime. The Committee noted in that connection that education about human rights was needed to combat those problems in order to make changes that were irreversible. It thanked the Romanian delegation for its comprehensive answers to the Committee's questions. The Government of Romania was requested to provide, in its next periodic report, information on measures taken in order to put an end to the legacy of the former regime, which could still be seen in prison conditions and the behaviour of the police.

# V. CONSIDERATION OF INFORMATION RECEIVED UNDER ARTICLE 20 OF THE CONVENTION

365. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

366. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

367. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

368. The Secretary-General, in pursuance of rule 69 of the rules of procedure, brought to the attention of the Committee at its fourth session information that had been submitted for the Committee's consideration under article 20, paragraph 1, of the Convention. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth to eighth sessions. During those sessions the Committee devoted the following number of closed meetings to its activities under that article:

| Session | Number of closed meetings |
|---|---|
| Fourth | 4 |
| Fifth | 4 |
| Sixth | 3 |
| Seventh | 2 |
| Eighth | 3 |

369. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

# VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION

370. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee against Torture for consideration. Twenty-eight out of 66 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Austria, Canada, Denmark, Ecuador, Finland, France, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Russian Federation, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay and Yugoslavia. No communication may be received by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

371. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22 (submissions from the parties and other working documents of the Committee) are confidential.

372. In carrying out its work under article 22 of the Convention, the Committee may be assisted by a working group of not more than five of its members, which submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee).

373. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, which has been taken by it (rule 110, para. 2).

374. The Committee concludes examination of an admissible communication by formulating its views thereon in the light of all information made available to it by the complainant and the State party. The views of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 111, para. 3) and are made available to the general public. As a rule, the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public.

375. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined. The Committee may also include in its annual report the text of its views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

376. During the time covered by the present report (seventh and eighth sessions) the Committee had four communications before it for consideration (Nos. 6/1990, 7/1990, 8/1991 and 9/1991).

377. In order to expedite the examination of communications, the Committee at its eighth session appointed two of its members as Rapporteurs responsible for communications Nos. 7/1990 and 8/1991.

378. The Committee concluded consideration of communication No. 6/1990 (I.U.P. v. Spain) at its seventh session by declaring it inadmissible under article 22, paragraph 5 (b), of the Convention, which precludes the Committee from considering a communication if all available domestic remedies have not been exhausted, unless it is established that the application of the remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The facts, as placed before it, revealed that the State party was duly investigating the author's allegations of torture. Pursuant to rule 109, paragraph 2, of the Committee's rules of procedure, the Committee may review a decision declaring a communication inadmissible under article 22, paragraph 5 (b), of the Convention, upon receipt of documentary evidence from the author to the effect that the reasons for inadmissibility no longer apply. For the text of the Committee's decision, see annex IV of the present report.

379. No action has been taken so far in respect of communication No. 7/1990. Following his release from imprisonment, contact has been lost with the author. The Committee is endeavouring to re-establish contact with him and has asked the State party to assist in determining his whereabouts. Clarifications are needed from the author to enable the Committee to consider the question of admissibility of his communication.

380. At its seventh session, the Committee commenced consideration of communication No. 8/1991, which was declared admissible at the eighth session. This is the first communication declared admissible by the Committee.

381. At its seventh session the Committee declared communication No. 9/1991 (L.B. v. Spain) inadmissible *ratione materiae* under article 22, paragraph 2, of the Convention. For the text of the Committee's decision, see annex V to the present report.

## VII. ADOPTION OF THE ANNUAL REPORT

382. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

383. Since the Committee will hold its second regular session of each calendar year in late November, which coincides with the annual session of the General Assembly, the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

384. Accordingly, at its 117th and 118th meetings, held on 7 and 8 May 1992, the Committee considered the draft report on its activities at the seventh and eighth sessions (CAT/C/VIII/CRP.1 and Add.1-16, CAT/C/VIII/CRP.2 and Add.1 and CAT/C/VIII/CRP.3 and Add.1). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its ninth session (9 to 20 November 1992) will be included in the annual report of the Committee for 1993.

### Notes

1/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 46 (A/46/46), paras. 16-20 and CAT/C/SR.80.

2/ Ibid., Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 14-16.

## Annex I

## LIST OF STATES WHICH HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AS AT 8 MAY 1992

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Afghanistan | 4 February 1985 | 1 April 1987 |
| Algeria a/ | 26 November 1985 | 12 September 1989 |
| Argentina a/ | 4 February 1985 | 24 September 1986 |
| Australia | 10 December 1985 | 8 August 1989 |
| Austria a/ | 14 March 1985 | 29 July 1987 |
| Belarus | 19 December 1985 | 13 March 1987 |
| Belgium | 4 February 1985 | |
| Belize | | 17 March 1986 b/ |
| Benin | | 12 March 1992 b/ |
| Bolivia | 4 February 1985 | |
| Brazil | 23 September 1985 | 28 September 1989 |
| Bulgaria | 10 June 1986 | 16 December 1986 |
| Cameroon | | 19 December 1986 b/ |
| Canada a/ | 23 August 1985 | 24 June 1987 |
| Chile | 23 September 1987 | 30 September 1988 |
| China | 12 November 1986 | 4 October 1988 |
| Colombia | 10 April 1985 | 8 December 1987 |
| Costa Rica | 4 February 1985 | |
| Cuba | 27 January 1986 | |
| Cyprus | 9 October 1985 | 18 July 1991 |
| Czech and Slovak Federal Republic | 8 September 1986 | 7 July 1988 |
| Denmark a/ | 4 February 1985 | 27 May 1987 |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Dominican Republic | 4 February 1985 | |
| Ecuador a/ | 4 February 1985 | 30 March 1988 |
| Egypt | | 25 June 1986 b/ |
| Finland a/ | 4 February 1985 | 30 August 1989 |
| France a/ | 4 February 1985 | 18 February 1986 |
| Gabon | 21 January 1986 | |
| Gambia | 23 October 1985 | |
| Germany | 13 October 1986 | 1 October 1990 |
| Greece a/ | 4 February 1985 | 6 October 1988 |
| Guatemala | | 5 January 1990 b/ |
| Guinea | 30 May 1986 | 10 October 1989 |
| Guyana | 25 January 1988 | 19 May 1988 |
| Hungary a/ | 28 November 1986 | 15 April 1987 |
| Iceland | 4 February 1985 | |
| Indonesia | 23 October 1985 | 3 October 1991 |
| Israel | 22 October 1986 | 3 October 1991 |
| Italy a/ | 4 February 1985 | 12 January 1989 |
| Jordan | | 13 November 1991 b/ |
| Latvia | | 14 April 1992 b/ |
| Libyan Arab Jamahiriya | | 16 May 1989 b/ |
| Liechtenstein a/ | 27 June 1985 | 2 November 1990 |
| Luxembourg a/ | 22 February 1985 | 29 September 1987 |
| Malta a/ | | 13 September 1990 b/ |
| Mexico | 18 March 1985 | 23 January 1986 |
| Monaco a/ | | 6 December 1991 b/ |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Morocco | 8 January 1986 | |
| Netherlands a/ | 4 February 1985 | 21 December 1988 |
| New Zealand a/ | 14 January 1986 | 10 December 1989 |
| Nicaragua | 15 April 1985 | |
| Nigeria | 28 July 1988 | |
| Norway a/ | 4 February 1985 | 9 July 1986 |
| Panama | 22 February 1985 | 24 August 1987 |
| Paraguay | 23 October 1989 | 12 March 1990 |
| Peru | 29 May 1985 | 7 July 1988 |
| Philippines | | 18 June 1986 b/ |
| Poland | 13 January 1986 | 26 July 1989 |
| Portugal a/ | 4 February 1985 | 9 February 1989 |
| Romania | | 18 December 1990 b/ |
| Russian Federation a/ | 10 December 1985 | 3 March 1987 |
| Senegal | 4 February 1985 | 21 August 1986 |
| Seychelles | | 5 May 1992 b/ |
| Sierra Leone | 18 March 1985 | |
| Somalia | | 24 January 1990 b/ |
| Spain a/ | 4 February 1985 | 21 October 1987 |
| Sudan | 4 June 1986 | |
| Sweden a/ | 4 February 1985 | 8 January 1986 |
| Switzerland a/ | 4 February 1985 | 2 December 1986 |
| Togo a/ | 25 March 1987 | 18 November 1987 |
| Tunisia a/ | 26 August 1987 | 23 September 1988 |
| Turkey a/ | 25 January 1988 | 2 August 1988 |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Uganda | | 3 November 1986 b/ |
| Ukraine | 27 February 1986 | 24 February 1987 |
| United Kingdom of Great Britain and Northern Ireland c/ | 15 March 1985 | 8 December 1988 |
| United States of America | 18 April 1988 | |
| Uruguay a/ | 4 February 1985 | 24 October 1986 |
| Venezuela | 15 February 1985 | 29 July 1991 |
| Yemen | | 5 November 1991 b/ |
| Yugoslavia | 18 April 1989 | 10 September 1991 a/ |

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a/ Made the declaration under articles 21 and 22 of the Convention.

b/ Accession.

c/ Made the declaration under article 21 of the Convention.

## Annex II

# MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE
## (1992-1993)

| Name of member | Country of nationality | Term expires on 31 December |
|---|---|---|
| Mr. Hassib Ben Ammar | Tunisia | 1995 |
| Mr. Peter Thomas Burns | Canada | 1995 |
| Mr. Alexis Dipanda Mouelle | Cameroon | 1993 |
| Mr. Fawzi El Ibrashi | Egypt | 1995 |
| Mr. Ricardo Gil Lavedra | Argentina | 1995 |
| Mr. Yuri A. Khitrin | Russian Federation | 1993 |
| Mr. Hugo Lorenzo | Uruguay | 1995 |
| Mr. Dimitar N. Mikhailov | Bulgaria | 1993 |
| Mr. Bent Sorensen | Denmark | 1993 |
| Mr. Joseph Voyame | Switzerland | 1993 |

# Annex III

## STATUS OF SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION AS AT 8 MAY 1992

### A. Initial reports

#### Initial reports due in 1988

| State party | Date of entry into force | Initial report date due | Date of submission | Symbol |
|---|---|---|---|---|
| Afghanistan | 26 June 1987 | 25 June 1988 | 21 January 1992 | CAT/C/5/Add.31 |
| Argentina | 26 June 1987 | 25 June 1988 | 15 December 1988 | CAT/C/5/Add.12/Rev.1 |
| Austria | 28 August 1987 | 27 August 1988 | 10 November 1988 | CAT/C/5/Add.10 |
| Belarus | 26 June 1987 | 25 June 1988 | 11 January 1989 | CAT/C/5/Add.14 |
| Belize | 26 June 1987 | 25 June 1988 | 18 April 1991 | CAT/C/5/Add.25 |
| Bulgaria | 26 June 1987 | 25 June 1988 | 12 September 1991 | CAT/C/5/Add.28 |
| Cameroon | 26 June 1987 | 25 June 1988 | 15/2/89 & 25/4/91 | CAT/C/5/Add.16 & 26 |
| Canada | 24 July 1987 | 23 July 1988 | 16 January 1989 | CAT/C/5/Add.15 |
| Denmark | 26 June 1987 | 25 June 1988 | 26 July 1988 | CAT/C/5/Add.4 |
| Egypt | 26 June 1987 | 25 June 1988 | 26/7/88 & 20/11/90 | CAT/C/5/Add.5 & 23 |
| France | 26 June 1987 | 25 June 1988 | 30 June 1988 | CAT/C/5/Add.2 |
| German Democratic Republic | 9 October 1987 | 8 October 1988 | 19 December 1988 | CAT/C/5/Add.13 |
| Hungary | 26 June 1987 | 25 June 1988 | 25 October 1988 | CAT/C/5/Add.9 |
| Luxembourg | 29 October 1987 | 28 October 1988 | 15 October 1991 | CAT/C/5/Add.29 |
| Mexico | 26 June 1987 | 25 June 1988 | 10/8/88 & 13/2/90 | CAT/C/5/Add.7 & 22 |
| Norway | 26 June 1987 | 25 June 1988 | 21 July 1988 | CAT/C/5/Add.3 |
| Panama | 23 September 1987 | 22 September 1988 | 28 January 1991 | CAT/C/5/Add.24 |
| Philippines | 26 June 1987 | 25 June 1988 | 26/7/88 & 28/4/89 | CAT/C/5/Add.6 & 18 |
| Russian Federation | 26 June 1987 | 25 June 1988 | 6 December 1988 | CAT/C/5/Add.11 |
| Senegal | 26 June 1987 | 25 June 1988 | 30 October 1989 | CAT/C/5/Add.19 (Replacing Add.8) |
| Spain | 20 November 1987 | 19 November 1988 | 19 March 1990 | CAT/C/5/Add.21 |
| Sweden | 26 June 1987 | 25 June 1988 | 23 June 1988 | CAT/C/5/Add.1 |
| Switzerland | 26 June 1987 | 25 June 1988 | 14 April 1989 | CAT/C/5/Add.17 |
| Togo | 18 December 1987 | 17 December 1988 | | |
| Uganda | 26 June 1987 | 25 June 1988 | | |
| Ukraine | 26 June 1987 | 25 June 1988 | 17 January 1990 | CAT/C/5/Add.20 |
| Uruguay | 26 June 1987 | 25 June 1988 | 6/6/91 & 5/12/91 | CAT/C/5/Add.27 & 30 |

#### Initial reports due in 1989

| State party | Date of entry into force | Initial report date due | Date of submission | Symbol |
|---|---|---|---|---|
| Chile | 30 October 1988 | 29 October 1989 | 21/9/89 & 5/11/90 | CAT/C/7/Add.2 & 9 |
| China | 3 November 1988 | 2 November 1989 | 1 December 1989 | CAT/C/7/Add.5 |
| Colombia | 7 January 1988 | 6 January 1989 | 24/4/89 & 28/8/90 | CAT/C/7/Add.1 & 10 |
| Czech and Slovak Federal Republic | 6 August 1988 | 5 August 1989 | 21/11/89 & 14/5/91 | CAT/C/7/Add.4 & 12 |
| Ecuador | 29 April 1988 | 28 April 1989 | 27/6/90, 28/2/91 & 26/9/91 | CAT/C/7/Add.7, 11 & 13 |
| Greece | 5 November 1988 | 4 November 1989 | 8 August 1990 | CAT/C/7/Add.8 |
| Guyana | 18 June 1988 | 17 June 1989 | | |
| Peru | 6 August 1988 | 5 August 1989 | | |
| Tunisia | 23 October 1988 | 22 October 1989 | 25 October 1989 | CAT/C/7/Add.3 |
| Turkey | 1 September 1988 | 31 August 1989 | 24 April 1990 | CAT/C/7/Add.6 |

## Initial reports due in 1990

| State party | Date of entry into force | Initial report date due | Date of submission | Symbol |
|---|---|---|---|---|
| Algeria | 12 October 1989 | 11 October 1990 | 13 February 1991 | CAT/C/9/Add.5 |
| Australia | 7 September 1989 | 6 September 1990 | 27 August 1991 | CAT/C/9/Add.8 |
| Brazil | 28 October 1989 | 27 October 1990 | | |
| Finland | 29 September 1989 | 28 September 1990 | 28 September 1990 | CAT/C/9/Add.4 |
| Guinea | 9 November 1989 | 8 November 1990 | | |
| Italy | 11 February 1989 | 10 February 1990 | 30 December 1991 | CAT/C/9/Add.9 |
| Libyan Arab Jamahiriya | 15 June 1989 | 14 June 1990 | 14 May 1991 | CAT/C/9/Add.7 |
| Netherlands | 20 January 1989 | 19 January 1990 | 14/3-11/9-13/9/90 | CAT/C/9/Add.1-3 |
| Poland | 25 August 1989 | 24 August 1990 | | |
| Portugal | 11 March 1989 | 10 March 1990 | | |
| United Kingdom of Great Britain and Northern Ireland | 7 January 1989 | 6 January 1990 | 22 March 1991 | CAT/C/9/Add.6 & 10 |

## Initial reports due in 1991

| State party | Date of entry into force | Initial report date due | Date of submission | Symbol |
|---|---|---|---|---|
| Germany | 31 October 1990 | 30 October 1991 | 9 March 1992 | CAT/C/12/Add.1 |
| Guatemala | 4 February 1990 | 3 February 1991 | | |
| Liechtenstein | 2 December 1990 | 1 December 1991 | | |
| Malta | 13 October 1990 | 12 October 1991 | | |
| New Zealand | 9 January 1990 | 8 January 1991 | | |
| Paraguay | 11 April 1990 | 10 April 1991 | | |
| Somalia | 23 February 1990 | 22 February 1991 | | |

## Initial reports due in 1992

| State party | Date of entry into force | Initial report date due | Date of submission | Symbol |
|---|---|---|---|---|
| Cyprus | 17 August 1991 | 16 August 1992 | | |
| Estonia | 20 November 1991 | 19 November 1992 | | |
| Israel | 2 November 1991 | 1 November 1992 | | |
| Jordan | 13 December 1991 | 12 December 1992 | | |
| Nepal | 13 June 1991 | 12 June 1992 | | |
| Romania | 17 January 1991 | 16 January 1992 | 14 February 1992 | CAT/C/16/Add.1 |
| Venezuela | 28 August 1991 | 27 August 1992 | | |
| Yemen | 5 December 1991 | 4 December 1992 | | |
| Yugoslavia | 10 October 1991 | 9 October 1992 | | |

## B. First supplementary reports

### First supplementary reports due in 1992*

| | |
|---|---|
| Afghanistan | 25 June 1992 |
| Argentina | 25 June 1992 |
| Austria | 27 August 1992 |
| Belarus | 25 June 1992 |
| Belize | 25 June 1992 |
| Bulgaria | 25 June 1992 |
| Cameroon | 25 June 1992 |
| Canada | 23 July 1992 |
| Denmark | 25 June 1992 |
| Egypt | 25 June 1992 |
| France | 25 June 1992 |
| Hungary | 25 June 1992 |
| Luxembourg | 28 October 1992 |
| Mexico | 25 June 1992 |
| Norway | 25 June 1992 |
| Panama | 22 September 1992 |
| Philippines | 25 June 1992 |
| Russian Federation | 25 June 1992 |
| Senegal | 25 June 1992 |
| Spain | 19 November 1992 |
| Sweden | 25 June 1992 |
| Switzerland | 25 June 1992 |
| Togo | 17 December 1992 |
| Uganda | 25 June 1992 |
| Ukraine | 25 June 1992 |
| Uruguay | 25 June 1992 |

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* By decision of the Committee at its seventh session (11 to 22 November 1991), those States parties which had not yet submitted their initial report by January 1992, namely Togo and Uganda, have been invited to submit both the initial and the supplementary reports in one document.

## Annex IV

## COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR EACH OF THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS SEVENTH AND EIGHTH SESSIONS

### A. Seventh session

| Report | Rapporteur | Alternate |
|---|---|---|
| Ecuador: additional report (CAT/C/7/Add.11 and 13) | Mr. Gil Lavedra | Mr. Sorensen |
| United Kingdom of Great Britain and Northern Ireland: initial report (CAT/C/9/Add.6) | Mr. Burns | Mr. Voyame |
| Czech and Slovak Federal Republic: initial report (CAT/C/7/Add.12) | Mr. Mikhailov | Ms. Chanet |
| Libyan Arab Jamahiriya: initial report (CAT/C/9/Add.7) | Mr. Sorensen | Mr. Burns |
| Uruguay: initial report (CAT/C/5/Add.27) | Mr. Gil Lavedra | Mr. Dipanda Mouelle |
| Australia: initial report (CAT/C/9/Add.8) | Mr. Burns | Mr. Perlas |
| Bulgaria: initial report (CAT/C/5/Add.28) | Mr. Khitrin | Ms. Chanet |
| Cameroon: additional report (CAT/C/5/Add.26) | Ms. Chanet | Mr. Voyame |

### B. Eighth session

| Report | Rapporteur | Alternate |
|---|---|---|
| Uruguay: Government's replies (CAT/C/5/Add.30) | Mr. Gil Lavedra | Mr. Dipanda Mouelle |
| Luxembourg: initial report (CAT/C/5/Add.29) | Mr. Mikhailov | Mr. Sorensen |
| Italy: initial report (CAT/C/9/Add.9) | Mr. Gil Lavedra | Mr. Voyame |
| Romania: initial report (CAT/C/16/Add.1) | Mr. Voyame | Mr. Dipanda Mouelle |

# Annex V

# DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

## A. Communication No. 6/1990, H.U.P. v. Spain

(Decision of 12 November 1991, adopted at the seventh session)

Submitted by: I.U.P. (name deleted)

Alleged victim: H.U.P. (name deleted)

State party concerned: Spain

Date of communication: 13 October 1990

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 November 1991,

Adopts the following:

### Decision on admissibility

1. The author of the communication is I.U.P., currently residing in France. She submits the communication on behalf of her brother, of the Basque separatist organization ETA, currently in detention in Spain. The brother claims to have been maltreated at the time of his arrest on 2 April 1990, to have been tortured by the *guardia civil* from 2 to 7 April 1990, and to be subjected to degrading treatment during his present detention.

2. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

3. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication from an individual, unless it has ascertained that the individual has exhausted all available domestic remedies. The author herself concedes that an examining magistrate in Alcada-de-Hénarès has recently ordered an investigation into the allegations of torture against her brother H.U.P. and that there has been no obstruction of justice in that respect. Accordingly, the Committee finds that the requirements of article 22, paragraph 5 (b), of the Convention have not been met.

4. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a written request by or on behalf of the alleged victim containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

## B. Communication No. 9/1991, L.B. v. Spain

(Decision of 18 November 1991, adopted at the seventh session)

Submitted by: L.B. (name deleted)

Alleged victim: The author

State party concerned: Spain

Date of communication: 16 September 1991

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 18 November 1991,

Adopts the following:

### Decision on admissibility

1. The author of the communication (dated 16 September 1991) is L.B., a lawyer residing in Spain. He claims to be a victim of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment because of the degrading and humiliating treatment he allegedly receives from Spanish judges and magistrates in retaliation for having brought charges against them.

2. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

3. Article 22, paragraph 2, of the Convention provides that the Committee shall declare inadmissible any communication which it considers to be an abuse of the right of submission, or to be incompatible with the provisions of the Convention. The Committee observes that the treatment the author complains of manifestly does not fall within the scope of article 1 of the Convention, which defines the term "torture", nor within the scope of article 16, which

refers to other cruel, inhuman or degrading treatment. Thus the communication is inadmissible ratione materiae.

4. The Committee therefore decides:

(a) That the communication is inadmissible under article 22, paragraph 2, of the Convention;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

## Annex VI

## LIST OF DOCUMENTS ISSUED FOR THE COMMITTEE DURING THE REPORTING PERIOD

### A. Seventh session

| Symbol | Title |
|---|---|
| CAT/C/4/Rev.2 | Revised general guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention |
| CAT/C/5/Add.25 | Initial report of Belize |
| CAT/C/5/Add.26 | Additional report of Cameroon |
| CAT/C/5/Add.27 | Initial report of Uruguay |
| CAT/C/5/Add.28 | Initial report of Bulgaria |
| CAT/C/7/Add.11 | Additional report of Ecuador |
| CAT/C/7/Add.12 | Initial report of the Czech and Slovak Federal Republic |
| CAT/C/7/Add.13 | Additional report of Ecuador (second part) |
| CAT/C/9/Add.6 | Initial report of the United Kingdom of Great Britain and Northern Ireland |
| CAT/C/9/Add.7 | Initial report of the Libyan Arab Jamahiriya |
| CAT/C/9/Add.8 | Initial report of Australia |
| CAT/C/14 | General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention |
| CAT/C/15 | Provisional agenda and annotations |
| CAT/C/SR.88-103 | Summary records of the seventh session of the Committee |

### B. Eighth session

| Symbol | Title |
|---|---|
| CAT/C/2/Rev.2 | Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and reservations, declarations and objections under the Convention |
| CAT/C/5/Add.29 | Initial report of Luxembourg |

| | |
|---|---|
| CAT/C/5/Add.30 | Replies of the Government of Uruguay |
| CAT/C/5/Add.31 | Initial report of Afghanistan |
| CAT/C/9/Add.9 | Initial report of Italy |
| CAT/C/12/Add.1 | Initial report of Germany |
| CAT/C/16 | Note by the Secretary-General listing initial reports that are due in 1992 |
| CAT/C/16/Add.1 | Initial report of Romania |
| CAT/C/17 | Note by the Secretary-General listing first supplementary reports that are due in 1992 |
| CAT/C/18 | Provisional agenda and annotations |
| CAT/C/SR.104-118 | Summary records of the eighth session of the Committee |

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**General Assembly**

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A/47/45
10 November 1992

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GENERAL ASSEMBLY
Forty-seventh session

# REPORT OF THE COMMISSION AGAINST APARTHEID IN SPORTS*

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* The present version is a mimeographed version of the report of the Commission against Apartheid in Sports. It will be issued subsequently in final form as Official Records of the General Assembly, Forty-seventh Session, Supplement No. 45 (A/47/45).

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# LETTER OF TRANSMITTAL

Excellency,

I have the honour to send herewith the report of the Commission against Apartheid in Sports, which was adopted unanimously by the Commission on 30 October 1992.

This report is submitted to the General Assembly in accordance with Assembly resolution 40/64 G of 10 December 1985 and with article 12, paragraph 2, of the International Convention against Apartheid in Sports.

Accept, Excellency, the assurances of my highest consideration.

(*Signed*) E. Besley MAYCOCK
Chairman
Commission against Apartheid in Sports

His Excellency
Mr. Boutros Boutros-Ghali
Secretary-General
United Nations
New York, NY

## I. INTRODUCTION

1. The General Assembly, by its resolution 40/64 G of 10 December 1985, adopted the International Convention against Apartheid in Sports, which entered into force on 4 April 1988.

2. The Convention has so far been ratified or acceded to by 54 States and signed by 32 States. Lists of the States parties and the signatories are contained in annexes I and II, respectively.

3. The Convention, in its article 11, established a Commission, which was to consider reports submitted by States parties on measures taken by them to give effect to the provisions of the Convention; to examine, in particular, the implementation of the provisions of article 10 and to report annually, through the Secretary-General, to the General Assembly and make recommendations on action to be undertaken.

4. The States parties to the Convention, at their meeting held on 2 March 1989, elected the following members of the Commission against Apartheid in Sports: Mr. Hamad Abdelaziz Al-Kawari (Qatar); Mr. Ahmad Fathi Al-Masri (Syrian Arab Republic); Mr. Fernando Alanís Camino (Mexico) (succeeded by Mr. Raúl González Rodriquez, who was appointed at the inaugural session of the Commission); Mr. Hocine Djoudi (Algeria); Mr. James Victor Gbeho (Ghana); Mr. Lionel A. Hurst (Antigua and Barbuda); Mr. E. Besley Maycock (Barbados); Mr. Abraham Ordia (Nigeria); Mr. Vladimir Platonov (Ukraine); Mr. Allan Rae (Jamaica); Mr. Tesfaye Shafo (Ethiopia) who was succeeded by Mr. Mulu Wale; Mr. Claudio Teehankee (Philippines) succeeded by Mr. Sedfrey Ordoñez; Mr. Boris Topornin (Russian Federation); Mr. Zoumana Traore (Burkina Faso); and Mr. Georg Zorowka (Germany).

5. At the first session of the Commission, on 2 March 1989, pursuant to article 11, paragraph 5 of the Convention, the Chairman of the Commission drew lots to choose the names of members of the Commission whose term should expire in March 1991. They were as follows: Mr. Maycock, Mr. Al-Kawari, Mr. Al-Masri, Mr. Gbeho, Mr. Traore, Mr. Djoudi, Mr. Platonov, Mr. Hurst and Mr. Ordia.

6. On 23 March 1991, the Secretariat informed the States parties to the International Convention against Apartheid in Sports with regret of the passing away of a member of the Commission, Dr. Georg Zorowka. The Commission paid tribute to the memory of its member.

7. On 24 June 1991, the States Parties to the International Convention elected Mr. Lionel A. Hurst (Antigua and Barbuda) to fill the vacancy caused by the death of Dr. Georg Zorowka.

8. On 24 June 1991, the States Parties elected the following members whose terms will expire on 24 June 1995:

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Mr. Gbedevi Zikpi Aguigah (Togo)
Mr. Abdul Karim Al-Ethawy (Iraq)
Mr. James Victor Gbeho (Ghana)
Mr. Joseph Lagu (Sudan)
Mr. Francis Malambugi (United Republic of Tanzania)
Mr. E. Besley Maycock (Barbados)
Mr. Vladimir Platonov (Ukraine)
Mr. Jai Pratap Rana (Nepal)
Mr. Zoumana Traore (Burkina Faso)

9. The terms of the following members of the Commission will expire on 2 March 1993: Mr. Tesfay Fichala (Ethiopia), Mr. Lionel A. Hurst (Antigua and Barbuda), Mr. Sedfrey Ordoñez (Philippines), Mr. Allan Rae (Jamaica), Mr. Raúl Gonzáles Rodriguez (Mexico) and Mr. Boris Topornin (Russian Federation).

10. Following the discussion at and the decisions taken by the eighth Meeting of the States Parties on 10 June and 21 July 1992, the Commission was convened from 28 to 30 October 1992 at United Nations Headquarters in New York.

11. The Commission conducted informal consultations on Wednesday morning, 28 October 1992, and began its formal session on 28 October 1992, in the afternoon. The provisional agenda of the session is included in annex III.

12. The outgoing Chairman, Mr. James Victor Gbeho, reported to the members at the first meeting on developments regarding sports in South Africa and the work of the Commission (see annex IV).

13. On 28 October 1992, the Commission elected Mr. E. Besley Maycock Chairman, Mr. James Victor Gbeho as Vice-Chairman and Mr. Jai P. Rana as Rapporteur.

14. The Commission also noted the resignation of Mr. Mulu Wale of Ethiopia and the appointment, under article 11 of the Convention, of Tesfay Fichala by the Government of Ethiopia as a member of the Commission.

15. The following members of the Commission participated in the session: Mr. Gbedevi Zikpi Aguigah (Togo); Mr. Tesfay Fichala (Ethiopia); Mr. James Victor Gbeho (Ghana); Mr. Lionel A. Hurst (Antigua and Barbuda); Mr. Joseph Lagu (Sudan); Mr. E. Besley Maycock (Barbados); Mr. Allan Rae (Jamaica) and Mr. Jai Pratap Rana (Nepal).

16. Observers of the following liberation movements attended the session: African National Congress of South Africa (ANC) and Pan Africanist Congress of Azania (PAC).

17. Observers of the following international and national sports organizations also attended the session: International Olympic Committee (IOC), World Boxing Council (WBC), National Olympic and Sports Congress of South Africa (NOSC), National Olympic Committee of South Africa (NOCSA) and South African Council on Sports (SACOS).

18. The agenda of the session, which is contained in annex V, was unanimously adopted.

19. The Commission approved a paper presented by the Secretariat on the organization of work of the Commission. 1/

20. The present report was adopted on 30 October 1992.

## II. PROGRESS TOWARDS INTEGRATION OF SPORTS IN SOUTH AFRICA AND THE ELIMINATION OF RACISM FROM SPORTS IN SOUTH AFRICA

21. The Commission has benefited in its consideration of this item from the participation of representatives of ANC, PAC, NOSC, NOCSA and SACOS.

22. There was consensus among the participants that important changes have taken place in the last two years, both inside South Africa as well as in the world. Many of these developments were positive. Among these developments, some pillar laws, which had bolstered the abhorrent system of apartheid, were abrogated in 1991, although the apartheid constitution of the country is yet to be abolished. Some political prisoners in South Africa have been released, and more are expected to be released by 15 November 1992. As far as sports are concerned, there is a strong, if not uniform, movement towards the integration of sports in South Africa. South Africa was admitted to IOC and many international sporting federations.

23. While there is agreement that these changes are not fundamental, the views of the liberation movements and non-racial sports organizations from South Africa are not identical with regard to these developments. One view is that these developments are positive steps in the direction of abolishing apartheid from sports and society in South Africa, that these developments need to be supported, that NOCSA, which is structured on a non-racial basis, is committed to combat apartheid in sports and society and that the role of the international sports community is to encourage these positive changes and help bring about more developmental assistance to the disadvantaged and non-racial sports in the country.

24. There was another view that until there is a united, non-racial and democratic society in South Africa in which everyone enjoys universal adult suffrage, sports in South Africa will in reality continue to be dominated by the white minority, although some black administrators and athletes may assume some prominent positions. The benefits of recent changes are limited and can neither reach the whole community nor be considered as effective to reverse the legacy of apartheid in sports.

25. There was unanimity, however, among South African sports organizations present that the Commission should concentrate on encouraging developmental aid to ensure that the ongoing process will not be reversed.

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26. The Commission acknowledges that positive developments have taken place in South Africa and also recognizes that key apartheid legislation has been abrogated. However, in the view of the Commission, the process of total elimination of apartheid is not yet irreversible. It is therefore essential that the international sports community give its full support to the political process towards a democratic and non-racial constitution in South Africa. The Commission notes that most sports disciplines are on the way to integration on a non-racial basis, but believes that further efforts are needed to ensure that sports in South Africa are totally integrated on a non-racial basis and that for the large sectors of the population who have been disadvantaged also with regard to sports, there should be an affirmative action plan agreed upon by all sports organizations in South Africa. Therefore, the Commission wishes to encourage the international community to provide developmental assistance to these sectors, in order for them to overcome the legacy of apartheid.

27. The Commission commends the WBC for its support to the development of non-racial sports in South Africa and, in particular, the donation of funds for the construction of two gymnasiums (one in East London and one in Soweto), and expresses the hope that other sporting federations will emulate this generous gesture.

28. In this regard, the Commission invites the Special Committee to continue its cooperation with non-States parties and non-governmental organizations, including national and international sporting federations, to enhance moral and material support to non-racial sports in South Africa, such as coaches, trainers and other technical assistance to disadvantaged sporting organizations.

## III. ADMISSION OF SOUTH AFRICA TO THE INTERNATIONAL OLYMPIC COMMITTEE

29. The Commission considered this question in light of statements made by the representatives of IOC, ANC, PAC, NOCSA, NOSC and SACOS. The Commission recognizes that NOCSA is organized on a non-racial basis, that it has won international acceptance and that teams from South Africa, organized on a non-racial basis and flying their own flag and emblem, participated in the Olympic Games at Barcelona in 1992.

30. At the same time, the Commission takes note of the fact that blacks and other disadvantaged groups have not yet been fully integrated in sports in general and that there are sports in South Africa in which they do not yet participate, due to remaining patterns of apartheid. The Commission is also aware of reports that there are racist sports administrators and athletes who do not hide their continued commitment to apartheid (such as playing the national anthem associated with the apartheid doctrine), or their desire to return to the old practices of apartheid. Those who pursue continued apartheid practices in sports fall under definitions established in the International Convention, which prescribes measures to be taken in this regard by States parties. The Commission also considers continued cooperation with IOC important in this context.

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## IV. REGISTER OF SPORTS CONTACTS WITH SOUTH AFRICA

31. The Commission considered this question in the light of the relevant decision of the Special Committee against Apartheid and the note prepared by the Secretariat in this regard. 2/

32. The Commission shares the view of the Special Committee that those who are going to South Africa to assist or to engage in sporting activities with non-racial sporting organizations in accordance with paragraph 9 of General Assembly resolution 46/79 A, should not be included in the Register.

33. The Commission appreciates the role the Register has played as an important instrument to isolate South Africa in the area of sports. Against the background of the engagement of South African non-racial sporting organizations in international exchanges, the Commission recognizes the difficulties of the Special Committee, under present circumstances, with regard to obtaining sufficient and unambiguous information about sports contacts with teams and athletes in or from South Africa, which is to maintain an accurate and meaningful Register. The Commission therefore considers it important that the format of the Register and modalities for obtaining accurate information be reviewed.

34. The Commission also expresses its appreciation to all teams and athletes who have foregone economic or other opportunity by refraining from sports contacts with South Africa in order to support international efforts to eliminate apartheid.

## V. REPORTS OF THE STATES PARTIES UNDER ARTICLE 12, PARAGRAPH 1, OF THE CONVENTION

35. The Commission reviewed 10 reports submitted to it under article 12 of the Convention by the following States parties: Barbados, Belarus, Ecuador, Jamaica, Mexico, Nepal, Nigeria, Senegal, Togo and Uruguay. Expressing its appreciation for the reports submitted, the Commission considers that they fulfil the requirements under that article. The Commission wishes to urge States parties that have not yet done so to submit their reports as required under the above-mentioned provision.

36. In this context, the Commission does not consider that the non-submission of reports can constitute a reason for departing from its mandate to meet under article 14 of the Convention. It stresses that its functions under the provisions of the Convention are not limited to considering reports of States parties and that its examination of and recommendations concerning the implementation of the provisions of article 10 of the Convention is of particular importance in this regard.

37. In order to assist States parties in fulfilling their obligations under article 12, paragraph 1, the Commission prepared a new questionnaire, reflecting political developments in South Africa (see annex V). The

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Commission also requested the Secretariat to prepare a table of the status of submission of reports by States parties, including due dates, where applicable, for the submission of new reports. The table may also include the date of the last submission of a report by a State party. The Commission authorized the Chairman to communicate by letter with the States parties with regard to the questionnaire.

## VI. CONCLUSIONS AND RECOMMENDATIONS

38. The Commission has benefitted from the participation of the observers in its session and, in particular, of the representatives of non-racial sporting organizations from South Africa. The Commission looks forward to closer cooperation with these organizations and the possibility of cooperating with the Special Committee against Apartheid, in the implementation of its work programme, to expedite the process of integration of non-racial sports in South Africa. The Commission feels that in light of the discussions, consideration could be given to convening a future annual session in one of the front-line States in order to allow for more observers from South Africa to participate.

39. The Commission regrets the non-payment of contributions by States parties, which not only constitutes a violation of their obligations under international law but is also detrimental to the efforts of the international community to achieve the elimination of apartheid from sports and society in South Africa. The Commission hopes that the question of contributions of the States parties to the budget of the Commission will be considered early in 1993 and that ways and means will be found to ensure the convening of the Commission in 1993.

40. The Commission considers that the decision of IOC to admit NOCSA (which is organized on a non-racial basis) is a positive step. However it cautions that any attempt by persons or organizations advocating apartheid to gain control of NOCSA must be met by firm action by the international sports community.

41. The Commission commends the Special Committee against Apartheid for the cooperation extended to the Commission and for its efforts through the years to isolate South Africa in the area of sports through the maintenance of the Register of Sports Contacts with South Africa, which has contributed significantly to bringing about the process of change now under way in South Africa.

42. The Commission recommends that the General Assembly:

(a) Invite all those States which have signed the Convention but have not ratified it to do so, and invite all States which have not signed the Convention to consider acceding to it;

(b) Urge all States parties to observe all the provisions of the Convention until apartheid has been abolished in South Africa;

(c) Call upon States to extend their cooperation to the Commission against Apartheid in Sports and to the Special Committee against Apartheid in matters relating to eliminating apartheid in sports;

(d) Call upon States, organizations and individuals to provide moral and material support to non-racial sports organizations in South Africa;

(e) Invite the Special Committee against Apartheid to consider using its good offices to promote fund-raising for the purpose of supporting racial integration of sports in South Africa;

(f) Request the Secretary-General to provide the necessary services to the Commission for it to fulfil its mandate, as well as ways and means to promote public awareness of the objectives of the Convention.

43. The Commission urges those States parties which have not done so to: (a) submit their reports in accordance with article 12, paragraph 1, of the Convention and to do so at their earliest convenience and (b) to pay their contributions to the budget of the Commission as required under article 11.

## Notes

1/ CAAS/C/1992/L.2.

2/ CAAS/C/1992/L.1.

## ANNEX I

## States parties to the International Convention against Apartheid in Sports

1. Algeria
2. Angola
3. Antigua and Barbuda
4. Bahamas
5. Barbados
6. Belarus
7. Bolivia
8. Bulgaria
9. Burkina Faso
10. Cuba
11. Croatia
12. Czechoslovakia
13. Ecuador
14. Egypt
15. Equatorial Guinea
16. Estonia
17. Ethiopia
18. Ghana
19. Guinea
20. Guyana
21. India
22. Iran (Islamic Republic of)
23. Iraq
24. Jamaica
25. Jordan
26. Latvia
27. Libyan Arab Jamahiriya
28. Mali
29. Mauritania
30. Mauritius
31. Mexico
32. Mongolia
33. Nepal
34. Niger
35. Nigeria
36. Peru
37. Philippines
38. Poland
39. Qatar
40. Russian Federation
41. Saint Kitts and Nevis
42. Senegal
43. Sudan
44. Syrian Arab Republic
45. Togo
46. Trinidad and Tobago
47. Tunisia
48. Uganda
49. Ukraine
50. United Republic of Tanzania
51. Uruguay
52. Venezuela
53. Yugoslavia
54. Zambia
55. Zimbabwe

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## ANNEX II

## States signatory to the International Convention against Apartheid in Sports

Benin

Burundi

Cameroon

Cape Verde

Central African Republic

China

Colombia

Cyprus

Gabon

Guinea-Bissau

Haiti

Hungary

Indonesia

Kenya

Lebanon

Liberia

Madagascar

Malaysia

Maldives

Morocco

Nicaragua

Panama

Rwanda

Saint Lucia

Sierra Leone

Somalia

Yemen

Zaire

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## ANNEX III

## Provisional agenda of the Commission against Apartheid in Sports

1. Opening of the session.

2. Statement by the outgoing Chairman of the Commission.

3. Election of officers.

4. Adoption of the agenda.

5. Replacement of a member of the Commission.

6. Organization of work of the Commission.

7. Readmission of South Africa to the International Olympic Committee.

8. Progress towards integration of sports in South Africa and the elimination of racism from sports in South Africa.

9. Register of Sports Contacts with South Africa.

10. Consultations with representatives of national and international sporting organizations.

11. Consideration of the reports of the States parties to the International Convention against Apartheid in Sports in accordance with article 12, paragraph 1, of the Convention.

12. Status of the International Convention against Apartheid in Sports.

13. Consideration of the draft report of the Commission to the General Assembly.

14. Closing of the session.

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14. Closing of the session.

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ugly existence in sports, is finally ended. To disband before that noble end is reached would, in my opinion, be tantamount to an act of irresponsibility. It is an act that can only give comfort to the South African regime which continues to resist for as long as possible the final liquidation of the policy of apartheid.

Distinguished members of the Commission will observe from the documentation for the present meeting that the contribution of any State party towards the holding of this meeting was not more than $4,000; indeed, in most cases, the total contribution was under $200 per State party. It seems therefore that money could not really have been the problem. It is rather the unfortunate perception gained by some that apartheid was on the wane and therefore the Commission had no further role to perform that had created doubt in the assessment of some States parties. Our friends and colleagues from South Africa will soon clarify that important point for the Commission and, therefore, I should not pre-empt them. But, even if that conjecture were really so, would it not be much better for the Commission to meet to first inform States parties and the General Assembly rather than informally to withhold its further services as a mandated Commission?

As all of us know, the Commission against Apartheid in Sports was created to oversee the implementation of the provisions of the International Convention against Apartheid in Sports. The Convention, while dedicating its aims and purposes primarily towards the elimination of apartheid from sports and from South African society generally, also aims at eradicating racism and racial discrimination from sports and society everywhere. It will be recalled that article 1 of the Convention defines apartheid as "a system of institutionalized racial segregration and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them ...". The responsibility of the Commission, in my view, is thus much deeper than some friends of the South African Administration are prepared to admit. The Commission's work, therefore, cannot be abandoned only on the first sign of change in South Africa.

On this important occasion, it is also worth noting that the Convention represents an important instrument for upholding the Olympic principles by which individuals and teams competing in sports are to be judged purely on merit rather than on any other criteria. It further represents an instrument for ensuring that the whole business of organizing and promoting sports is directed towards the racial integration of sports and not to sowing indirectly the seeds of discrimination. It is in the pursuit of these objectives that the Commission, since its inception, has extended its cooperation to the International Olympic Committee and other sporting organizations. That cooperation also requires that the Commission guide the International Olympic Committee and not remain indifferent to its activities.

Distinguished members and observers, although the Convention has so far been ratified by only 54 States, it should be a matter of some pride to all of us that its principles have contributed in no mean measure to the development

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of international humanitarian law. We must ensure that the Convention is supported and not undermined by acts such as member States not attending meetings of the Commission or the failure by States parties to submit reports in implementation of its article 12, paragraph 1. It is perhaps worth recalling in this context that it is part of international law that any State which commits itself to an international legal instrument is also obliged to fulfil its obligations under the instrument and cannot decide unilaterally to vary its method of carrying out the prescribed legal obligation under the specific instrument. In our case, no State party can decide that it is no longer committed to or by the Convention except by following the procedure set in the Convention for State parties to withdraw from the Convention. Therefore, those States parties refusing to make contributions or submit reports are really not adhering to the requirements of the Convention. They are in fact indirectly instituting veto powers which do not exist in the article of the Convention.

I have already stated that I would not like to pre-empt the opinion of our South African colleagues as to whether progress in integrating sports in South Africa has been fully achieved or not, but please allow me to help clarify the Commission's standing vis-à-vis apartheid, since events in South Africa are constantly used to deny the clear mandate of the Commission.

I would like to note in this context that while the International Convention is aimed in particular at dealing with the situation in South Africa resulting from the abhorred policies of apartheid both in sports and in society, the provisions of the Convention, as I have previously observed, could be applicable to any system of institutional racism and discrimination. We must therefore not be unnecessarily restricted in the interpretation of our mandate. It is important that members of the Commission remind themselves of the particular requirement of the Convention. Furthermore, the Convention also situates our work in a time-frame which we should not be oblivious to. Article 10 of the Convention, which specifically deals with the question of South Africa, states in paragraph 5 that:

> "The provisions of the present article relating specifically to South Africa shall cease to apply when the system of apartheid is abolished in that country."

Thus, while noting progress in South Africa, if indeed there has been progress in abolishing apartheid, the question that the Commission should attach importance to is whether or not apartheid has been abolished in South Africa. My submission is that the Commission or States parties would be acting ultra vires in taking a decision to abandon the work of the Commission before an unequivocal decision on this important question is collectively reached.

Another issue which has been continuously raised at meetings of the States parties since the last meeting of the Commission is that the Commission has been unable to meet because only a few States parties were able to submit their reports. While agreeing that all States parties must present their

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reports in accordance with article 12, paragraph 1, of the Convention and that the review of these reports constitutes an essential element of the work of the Commission, it must also be noted that the Commission has many other important tasks, including the review of the general situation of the elimination of apartheid from sports, as well as other functions entrusted to the Commission under article 10 of the Convention. The submission of reports alone should not be the criterion for deciding on meetings of the Commission.

Before I end this statement, permit me to say a word or two about the boycott of apartheid in sports by the international community. This specific action has been very successful in exerting pressure on the South African Administration to give up the policy of apartheid, given the importance which South Africans attach to sports. The same boycott has contributed immensely towards the efforts of the United Nations Educational, Cultural and Scientific Organization as well as other organizations in their fight against apartheid and racial discrimination. But, the implementation of the sports boycott is by no means the main preoccupation of this Commission. The Commission's work should therefore not be judged solely on the boycott programme.

I would be remiss in my duties if I did not pay tribute to the excellent work done by the Special Committee against Apartheid, under its Chairman, His Excellency Professor Ibrahim Gambari of Nigeria, in leading the struggle to eliminate apartheid from society and from sports in South Africa. The Special Committee was the first to advocate the boycott of apartheid in sports and went on to institute the Register of Sports Contacts with South Africa in 1981. It has also supported the Commission in its work. For all these and the Special Committee's assistance to me as the Chairman of the Commission, I shall always remain grateful.

Finally, I wish to extend a warm welcome to the representatives of sporting organizations which are represented at our meetings this week. We look forward to their invaluable impact in assessing the situation in South Africa and on that country's progress towards the elimination of apartheid and racial discrimination from sports and from society in general.

I have deemed it fit to make these few remarks in clarification of the status of the Commission and our mandate as they were spelt out for us. I sincerely hope that we can now work assiduously within these parameters and, like our parent world body, the United Nations, refrain from uncritically following the crowd or those whose power and influence could be useful only in stifling the truth and the law concerning the programme for the total eradication of apartheid.

I thank you for your kind attention.

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## ANNEX V

## Questionnaire to the States parties in fulfilment of their obligations under article 12, paragraph 1, of the International Convention against Apartheid in Sports

1. The following question is addressed to the States parties that did not submit their first report:

(a) What are the legislative, judicial, administrative and other measures adopted to give effect to the provisions of the International Convention against Apartheid in Sports?

For the States parties that have already submitted their first report:

(b) Are there any new measures adopted concerning the International Convention against Apartheid?

For all the States parties, below are additional questions.

2. Are there exchanges between South African sports bodies and teams based on the policies of apartheid as well as South African athletes advocating these and sporting bodies, teams and athletes in your country?

3. What action has your Government taken with respect to the Register of Sports Contacts with South Africa issued by the United Nations Special Committee against Apartheid?

4. What action has your Government taken to discourage its citizens and others from supporting or encouraging apartheid in sports?

5. What forms of moral and material support is your Government planning to provide to the non-racial sports organizations and to sports activities by disadvantaged sectors in South Africa?

6. What level of assistance would your Government be willing to provide either directly to the non-racial organizations concerned or as part of a multilateral contribution?

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